98-99 Annual Report

ROYAL CANADIAN MOUNTED POLICE
EXTERNAL REVIEW COMMITTEE

Royal Canadian Mounted Police
External Review Committee

Comité externe d'examen de la
Gendarmerie royale du Canada

CANADA

Chairman Président

May 31, 1999

The Honourable Lawrence MacAulay, P.C., M.P.
Solicitor General of Canada
Sir Wilfrid Laurier Building
340 Laurier Avenue West
Ottawa, Ontario
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Dear Mr. MacAulay:

Pursuant to Section 30 of the *Royal Canadian Mounted Police Act*, I am pleased to submit the Royal Canadian Mounted Police External Review Committee's annual report for the fiscal year 1998-99 in order that a copy be laid before the House of Commons and the Senate.

Yours very truly,

Philippe Rabot
Acting Chair

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Annual Report

RCMP EXTERNAL REVIEW COMMITTEE

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Introduction

The RCMP External Review Committee is an independent, neutral tribunal established under the RCMP Act. Its principal mandate is to provide recommendations to the RCMP Commissioner concerning second-level grievances and appeals against disciplinary measures handed down by adjudication boards. The RCMP Commissioner is not required to accept the recommendations of the Committee, but when he chooses not to do so, he is required to provide his reasons. His decision is final although it is subject to judicial review by the Federal Court, Trial Division.

Mandate, Roles and Responsibilities

Under the *RCMP Act*, the RCMP Commissioner refers all appeals of formal discipline and all discharge and demotion appeals to the Committee unless the member of the RCMP requests that the matter not be referred. In addition, pursuant to section 33 of the *RCMP Act*, the RCMP Commissioner refers certain types of grievances to the Committee in accordance with regulations made by the Governor in Council. Section 36 of the *RCMP Regulations* specifies the grievances which the RCMP Commissioner is obliged to refer to the Committee, namely grievances respecting:

a) the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members;

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

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

d) the Force's interpretation and application of the RCMP Relocation Directive; and

e) administrative discharge on the grounds of physical or mental disability, abandonment of post, or irregular appointment.

In each case, the member may request that the matter not be referred, in which case the RCMP Commissioner has the discretion whether to refer the matter or not.

The Chair of the Committee reviews all matters referred to it. Where the Chair is not satisfied with the RCMP's disposition of the matter he or she may

a) advise the RCMP Commissioner and the parties of his Findings and Recommendations resulting from his review; or

b) initiate a hearing to consider the matter. At the end of the hearing the Committee member(s) designated to conduct the hearing will advise the RCMP Commissioner and the parties of the Committee's Findings and Recommendations.

In practice, even when the Chair is satisfied with the original disposition, he advises the RCMP Commissioner and the parties of the reasons by means of Findings and Recommendations. The RCMP Commissioner may accept or reject the Committee's recommendations but if he rejects a recommendation, he must provide written reasons for so doing.

In conducting its review of matters referred to it, the Committee attempts to achieve a balance amongst the many complex and different interests involved while ensuring that the principles of administrative and labour law are respected and the remedial approach indicated by the RCMP Act is followed. In each case, the Committee must consider the public interest, ensure respect for the right of RCMP members to fair treatment in accordance with the spirit of the Act and of the Public Service's internal regulations, and ensure that RCMP management is in a position to manage its labour relations in such a way as to maintain public confidence.

History

Established on June 30, 1988, the Committee is one of two tribunals created as a civilian oversight agency for the RCMP. The other is the RCMP Public Complaints Commission. 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. Ms. Lynch made a major contribution to the establishment within the RCMP of alternative dispute resolution (ADR), which has enjoyed great success. The current Vice-Chair and Acting Chair, Philippe Rabot, has held these positions since July 27, 1998. Mr. Rabot was formerly Vice-Chair of the Assessment Review Board of Ontario, Secretary of the Copyright Board of Canada, and Assistant Director General of Appeals of the Public Service Commission of Canada.

Program Organization

The Committee is a component of the Solicitor General portfolio. Under the legislation, the Committee is composed of a full-time Chair, a Vice-Chair, and three other members who can be appointed on a full-time or part-time basis, and who are available to assist with the work (e.g.: hearings). Currently, however, the Committee operates with only one member, the Vice-Chair, who is authorized by the Solicitor General (pursuant to subsection 26(2) of the *RCMP Act*) to perform the duties of the Chair. The Committee reports annually to Parliament. Case review and administrative support are provided by a staff of five who report to the Chair through the Executive Director. The Committee's offices are located in Ottawa.

The Committee's partners, which include the RCMP Public Complaints Commission and the Ministry of the Solicitor General, lend premises or equipment, or provide services the Committee would otherwise have to finance from its own resources.

Environment

Several factors affect how the Committee conducts its business:

Committee's lack of control over the number and nature of referrals

The Committee does not control the number or the nature of cases referred to it. These may vary considerably from year to year. The number of referrals depends, in part, on members' decisions as to whether they should submit their cases to level II, and on the Force's interpretation of the RCMP Regulations which establish the Committee's jurisdiction. The Committee is not involved in the decision as to whether a matter should be referred to it, and it has no power to consider grievances that have not been referred to it. Section 36 of the RCMP Regulations enumerates the categories of grievance that must be referred to the Committee. While paragraphs 36(b) through (e) are specific, this is not so with paragraph 36(a)-grievances related to the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members of the RCMP. Whether or not a matter is referable to the Committee under section 36 requires an interpretation in each case. While the vague wording of paragraph 36(a) only affects this one paragraph, it has disproportionate effects given that it accounts for a large proportion of the Committee's grievance referrals. The fact that certain types of very important grievances cannot be referred has given rise to a number of questions. The Committee has therefore undertaken to work with the RCMP to thoroughly review this matter, in order to determine whether it might be opportune to propose amendments to section 36.

Legislative and policy changes

Any initiative undertaken by the RCMP to change legislation or policy in the area of labour relations could have a significant impact on the Committee's workload. For example, under section 31 of the Act, a decision cannot be grieved if some other process

for redress is provided by a Standing Order of the Commissioner. It is rather unusual to see the mandate of a tribunal being narrowed or enlarged in scope by a mere administrative measure, but this is precisely what can be done by the RCMP Commissioner, without involvement of the Legislator.

Ever-increasing complexity of cases referred to the Committee

While the number of cases referred to the Committee has remained relatively stable in the past three years, the cases themselves have presented an increasing number of unusual legal issues. In the majority of cases, the disciplinary action sought has been discharge. Although the Committee's resource allocations have not been increased, the cases before it demand meticulous analysis, and in the past year this requirement has brought some increase in the average time that the Committee needs to complete its review of a case and submit its recommendation to the Commissioner.

Fast-changing RCMP environment

In the past three years, the RCMP has taken several initiatives to bring about a change in its organizational culture. One key initiative was the establishment of a dispute resolution system. This might have been expected to reduce the number of referrals to the Committee but the reality was otherwise, partly because the program must not be regarded as a panacea. The lightning pace of change within the RCMP in recent years, due to the regionalization of its organizational structure, the impact of financial cutbacks and the adoption of new approaches to ethics and values issues, has had repercussions in all regions of Canada. And, reflecting the general trend among Canadians toward a heightened awareness of the rights of the individual, the members of the RCMP are more willing to assert themselves to ensure that they are treated with respect and dignity by their employer. This has made them readier to challenge decisions that they consider unfair. Consequently, it would not be surprising to see the Committee's workload increase significantly in the years to come.

THE YEAR UNDER REVIEW

In 1998/99, cases involving a wide range of issues were brought before the Committee, particularly disciplinary matters arising from allegations of transgression of the RCMP Code of Conduct, adjudication of disputes concerning relocation expenses incurred by members assigned to new posts, classification grievances and termination of employment due to medical reasons. Thanks to the professionalism and dedication that have consistently characterized the personnel of the Committee, each file is carefully examined and every measure is taken to ensure that each case receives appropriate consideration.

The new Chair of the Committee, who took up his duties in mid-year, has met with most of the major target groups served by the Committee, particularly the Divisional Staff Relations Representatives (whose mandate is to safeguard the interests of the members of the RCMP) and the organizational executive. All those concerned expressed their confidence in the work that the Committee has done in its first decade. Thanks to this dialogue, the Chair received many extremely useful suggestions for helping the Committee improve its service delivery, and many of these suggestions have already been implemented. For example, every report on a case is accompanied by a summary of findings and recommendations, which provides the parties and other interested persons with easily accessible highlights of the Committee's analysis of the case.

The Committee has also continued to be involved in the planned review of the Committee's grievance review mandate. Two more projects, scheduled for completion in the spring of 1999, involve the creation of a Website and an electronic data bank.

I. Cases referred to ERC since its creation *(as of March 31, 1999)*

Year	Grievances	Disciplines	Discharges	Total
1988-89	0	2	0	2
1989-90	6	7	0	13
1990-91	33	11	0	44
1991-92	32	3	0	35
1992-93	19	2	1	22
1993-94	55	6	0	61
1994-95	53	8	1	62
1995-96	18	13	1	32
1996-97	30	5	1	36
1997-98	17	6	0	23
1998-99	17	7	0	24
Total	280	70	4	354

II. Cases dealt with by ERC since its creation

- The ERC has, so far, issued findings and recommendations in 243 grievance cases
- a decision has been reached by the Commissioner in 228 cases:
  - he was in agreement with ERC in 87% (199) of them
  - he disagreed in 13% (29) of the cases
  - in 2 cases, the Commissioner decided that the Committee did not have jurisdiction
- 3 cases are awaiting a Commissioner's decision;
- in 10 cases, the members withdrew their grievance after receiving the Committee's findings and recommendations.
- in two cases, the Committee concluded it had no jurisdiction.

- The ERC has, so far, issued findings and recommendations in 59 discipline cases:
  - the Commissioner made a decision in 52 cases:
  - he was in agreement with ERC in 73% (38) of them;
  - he disagreed in 27% (14) of the cases.
- No cases are awaiting a Commissioner's decision;
- In 7 cases, the members withdrew their appeal after receiving the Committee's findings and recommendations.

CASES

What follows is a short description of the specific cases reviewed by the Committee during the year. The number in bold print at the beginning of each summary is the reference number assigned by the Committee upon completion of the case. At the end of each summary, the disposition of the case by the Commissioner is provided, except in those cases where he has not yet issued a decision.

A) Discipline - Part IV of the Rcmp Act

D-56 A member was involved in coaching hockey at two posts at which he served over a period of several years and had allowed a number of boys who played on his teams to live at his house, either because they were living on the streets, because their families lived too far away for the boys to attend practices, or because the parents or the local social services had asked him to. Other players on his teams and their friends would also visit his house, either to see him or the other boys staying there. The member became the subject of four allegations of disgraceful conduct bringing discredit on the Force. Two allegations concerned conduct which had occurred over a period of nearly eight years at two different postings, where the member was alleged to have: condoned the consumption of liquor by minors; made pornographic material available to minors living with him or visiting his house; become inebriated in the presence of minors at his house; engaged in horseplay with male minors, in the course of which backhand slaps to the genital area were sometimes employed. The third allegation concerned the improper storage of his firearm. At the time of a suspension from duties, the member had been accompanied to his residence by his superior, so that he could surrender his revolver. It was alleged that the member's loaded revolver was located on the floor of his bedroom. The fourth

allegation suggested that, while on suspension in relation to this matter, the member allowed two minors who were visiting him to consume alcohol at his residence.

At the Adjudication Board hearing, the member admitted the allegations and an agreed statement of facts was produced. The statement contained the admission and also revealed that the member had received prior informal discipline for having, on another occasion, allowed minors to consume alcohol and that he had also received a performance record entry for having allowed minors to consume alcohol and watch pornographic films on yet another occasion. The Board concluded that the allegations were established. Regarding the sanction, the member tendered into evidence over twenty letters, either from parents, teachers, or other members of the community, expressing gratitude for the member's involvement in the community and his significant efforts in assisting and encouraging the local youth in their education and in sports. The member also tendered a number of his performance evaluations, which described him as the most valued member of his unit and a very competent and tireless investigator. The member provided oral testimony as well.

The Adjudication Board imposed a forfeiture of three days' pay and a reprimand with respect to the third allegation, which concerned the member's improper storage of his service revolver. The Board then considered the three other allegations together and ordered the member to resign. The Board felt that, in light of having been disciplined for similar behaviour, the member certainly knew that his actions were improper. The Board did not believe that the member had accepted responsibility for his actions, or that he was likely to rehabilitate himself. The member appealed the order to resign, arguing that the Board had made several errors in its decision.

In examining the appeal, the External Review Committee found two errors in the Board's decision. First, the Board had erred in stating that the member's conduct, in serving liquor to minors residing with him, was in violation of the applicable provincial liquor law. Under this law, it is not an infraction for someone to serve liquor to a minor under his control in the minor's house or in a residence.

Second, although the Board noted the member's positive community achievements, the Board had granted insufficient attention to this and failed to recognize the member's devotion to his employer and to his community as the strong mitigating factor that it was.

Although the first error led the Board to attribute disproportionate importance to the fact that the member had served alcohol to minors residing with him, the Committee felt that this error was not determinative. It remained that the member had breached the liquor law in those instances where he had condoned the consumption of alcohol by boys who were not living with him. Furthermore, the member's behaviour represented a contravention of the Code of Conduct, and the member knew, throughout the period of time to which the allegations referred, that his behaviour relating to alcohol was considered disgraceful conduct by his employer.

The Committee found the Board's second error to be more significant. It noted that, based on the letters of support and the performance evaluations in evidence, the member had given generously of himself, in terms of both police and volunteer work, in the communities in which he served. Although the member must be held responsible for certain acts which amounted to disgraceful conduct, his devotion and the measurable good which resulted from it could not be ignored. Nevertheless, in joining the Force, the member had chosen a governed profession. The concern of the Committee was not so much the gravity of the specific actions, as much as the fact that the member consciously decided not to change his behaviour despite having received a clear message from his employer that such behaviour was not ethically acceptable. Credit was to be given to the member for his positive achievements in the community, and the misconduct was therefore to be viewed in a less serious light. Even then, however, he had demonstrated that he was not prepared to be governed by his obligations under the Code of Conduct. In the end, the Committee was satisfied that the Board's errors were not sufficient to call into question the fairness or appropriateness of the sanctions which it imposed. The Committee thus recommended that the appeal be denied.

The Commissioner agreed with the Committee's recommendation. He denied the appeal and confirmed the order to resign.

The member in this matter was the subject of two allegations of disgraceful conduct. One allegation was that he had solicited the services of a prostitute who was actually an undercover municipal police officer and the other involved the member's having acted unprofessionally and inappropriately to a municipal police officer on another occasion. The member was convicted in criminal court of soliciting the services of a prostitute. He admitted the allegations before the Adjudication Board and was ordered to resign. The member appealed this sanction.

In his appeal, the member argued that there were mitigating factors that had either been underestimated or not considered by the Board. Firstly, he argued that his education (the member had a Bachelor of Arts degree and was in law school at the time of the hearing) could be of value to the RCMP and the Board had failed to consider this fact. Secondly, the member submitted that the Board had failed to state its impression of the mitigating value of his apology to the Board. Thirdly, the member argued that the Board had failed to consider the financial hardship he had suffered while suspended without pay. The Committee examined these factors and found no error in the Board's appreciation of them.

Aggravating factors that the member argued were overemphasized by the Board included: the impact of the member's conduct on the prostitution problem in the area in which he lived, the notoriety that the member's criminal trial had attracted and the member's prior disciplinary record. The Committee determined that the prostitution problem in the area had not been the basis of the Board's decision on the sanction. The notoriety of the case was a proper, though not a crucial consideration for the Board, and the Board did not err in considering this factor. The member's prior disciplinary record, which included formal and informal discipline, had been properly considered by the Board. The Committee did find that the Board

had erred when it accepted that the member's credibility had come into question as a result of the criminal conviction. This determination was in error because the Board had indicated at the hearing that it would not consider the reasons for the decision of the trial judge, and then did so. However, the Committee found that the error was not determinative of the outcome of the appeal; it found that the Board's conclusion on the sanction would have been the same even if it had not considered the judge's reasons.

The member pointed to certain words used by the Board in its decision and argued that they indicated that the Board had used an improper approach and had overstepped its jurisdiction. The Committee found that there was no error in the Board's approach to discipline and that there had been no irregularity in the Board's decision when read in its entirety.

The member argued that the *RCMP Act* required an individual sanction to be imposed for each established contravention of the *Code of Conduct*; he also argued that his two contraventions represented isolated incidents, neither of which should have given rise to an order to resign. The Committee found that there was nothing in the wording of the relevant provision of the *RCMP Act* which required an individual sanction for each contravention, and that it was open to an adjudication board to penalize two or more established contraventions with a single sanction. In this case, the Committee found that it had been reasonable for the Board to consider the member's conduct cumulatively and to impose a single sanction for both contraventions. The sanction imposed had been reasonable, in light of all of the circumstances of the matter and the conduct at issue. The Committee recommended that the appeal be denied.

The Commissioner agreed with the Committee's Findings and Recommendation. He denied the appeal and confirmed the order to resign.

The member was the subject of two allegations of disgraceful conduct regarding his involvement with a protected witness to whom he had been assigned as "handler". He admitted having had a sexual relationship with the witness for a period of over four months while he had been her handler. The Adjudication Board found one allegation of disgraceful conduct to have been established and imposed the following sanction: demotion by one rank, forfeiture of ten days' pay, a reprimand, and a recommendation for transfer. He appealed the sanction.

The member argued that the seriousness of the sanction had been dependent on the board's determination that the protected witness had been vulnerable at the time of the relationship, and submitted that the board had erred in its assessment of the witness' vulnerability. He argued that the Board had erred by not admitting the expert psychological evidence offered to it. The Committee found that the Board had been wrong to refuse to hear the expert evidence and wrong to rely solely on the knowledge and experience of the Board members to make such a determination. However, the Committee found that the seriousness of the sanction had clearly not been dependent on the Board's finding that the witness had been vulnerable, and therefore did not recommend that this ground of appeal be allowed.

The member submitted that the Board, in determining that his capacity to perform his duties had been compromised to the extent that a demotion was appropriate, had failed to take into account his good performance during the period between the time of the misconduct and the disciplinary hearing. The Committee found that this evidence, which the Board had explicitly considered, did not indicate that the Board's decision was unreasonable. The Committee found no error in the Board's determination that the member's competence had been compromised by his actions.

The member argued that demotion was too harsh to be appropriate to the circumstances of his case, considering the inappropriate actions of others, past cases of demotion, and the fact that his

honesty and integrity had been found not to have been compromised. He submitted that demotion was an arbitrary sanction which, when applied to him, amounted to a double demotion. The Committee found that demotion was an appropriate and reasonable sanction in this case. It found that the Board had provided adequate reasons for its determination that the Appellant's ability to function at his level of responsibility had been compromised to the point where a demotion was reasonable.

The Committee did recommend that the forfeiture of ten days' pay be eliminated from the sanctions. It found that demotion was an adequate sanction with which to address the relevant concerns in this case and that the forfeiture of pay was therefore unnecessary in the circumstances.

The Commissioner did not find it inconsistent that both a demotion and a forfeiture of pay were imposed. He found the Appellant's conduct so irresponsible that he would have supported a recommendation for dismissal. The Commissioner pointed out that the Appellant was entrusted with the protection of a vulnerable person whose life was in danger and that he had by his conduct seriously compromised the safety of the Complainant. The Commissioner concluded that the Appellant's conduct was so reprehensible that his integrity was destroyed, and stated that the length of time of the Appellant's misconduct showed a total disregard for the values of the Force. The Commissioner finally expressed concerns in regard to the lack of appropriate supervision in this case and he commented on the impact of the Appellant's conduct on the Witness Protection Program which, in his view, had been harmed by the Appellant's disgraceful conduct.

B) Grievances - Part III of the RCMP Act

i) Bilingual Bonus

This grievance concerns the bilingualism bonus. The member had Second Language Evaluation results at the "B" level or higher in all categories. The member was retested and received results lower than the "B" level in one category. Some time later, the member was again retested and reestablished at least a "B" level in all categories. In 1995, the member was awarded retroactive payment of the bonus as part of the Force-wide program to pay the bonus in consequence of the Federal Court of Appeal's decision in *R. v. Gingras* [1994] 2 F.C. 734. However, the bonus was denied to the member for the period in which his SLE results in one category were less than the "B" level. The member grieved, arguing that policy within his division had prevented him from being retested earlier. The Force responded by stating that Treasury Board requirements prevented payment of the bonus for periods in which an employee's SLE results were not at least at the "B" Level.

As part of his arguments, the member submitted a Grievance Advisory Board (GAB) report which had been issued for a similar grievance submitted by another member. In this other case, the GAB had found that RCMP Bulletin AM-2077 had provided some flexibility for the payment of the bonus within the Force, including an ability to extend the validity period of SLE results by creating a presumption of competence for periods when testing was not available, on the condition that a member's subsequent SLE results were at least at the "B" level. The GAB had determined that this Bulletin indicated that the Force had some discretion in determining eligibility, and it recommended that the bonus be paid. This recommended result in the similar grievance was subsequently upheld at Level I. The member in the present case argued that the same result should ensue in his grievance.

The GAB and the Level I adjudicator in the present case found that the grievance should be upheld for essentially the same reasons

as had been provided in the adjudication in the other grievance. However, the Appropriate Officer refused to provide payment to the member, stating that he did not have the discretion to ignore Treasury Board requirements and to pay the member the bonus for the period in which his SLE results were not at least at the "B" level. The member submitted the matter to Level II.

The grievance was referred to the Committee. With respect to the refusal by the Appropriate Officer to implement the Level I decision, the Committee referred to its Findings and Recommendations in G-90. In that case, the Committee had indicated that, in exceptional circumstances where, in the RCMP's view, an adjudication was clearly incorrect and could threaten the good administration of the RCMP, the RCMP could refuse to implement such a decision. In such a case, nevertheless, the RCMP was required to forward the grievance to Level II for final adjudication. The Committee also noted that, prior to the Commissioner's decision in G-90, he had received a legal opinion suggesting that the procedure advocated by the Committee in G-90 might be unsafe. The Committee addressed this opinion and indicated that it had some doubt whether the opinion was fully reflective of the grievance system established pursuant to Part III of the RCMP Act. The Committee also noted that in G-90, the Commissioner had not followed the legal opinion. The Committee continued to endorse the reasoning used in G-90 and it found that the grievance was properly referred for full review on the merits at Level II.

With respect to the merits, the Committee found that a number of provisions of the Treasury Board's bilingualism bonus policy apply to employees who do not maintain their language profiles. For example, suspension of payment of the bonus comes into effect two months after the date when the employer gives notice of an unsuccessful test. The RCMP had not provided payment with respect to this period. The Committee found that the grievance should be upheld, pursuant to Treasury Board policy, with respect to at least this two-month period.

The next question was that of reinstatement of the bonus.

Pursuant to the Treasury Board policy, an employee may seek to become re-eligible for the bonus if, following a mandatory one-year waiting period after failing the SLE, he takes the examination again and passes. In the Committee's view, the member ought not to have been disadvantaged by the lack of availability of testing in his division. An employee is to be given the opportunity to regain his or her language qualifications after having lost them, and is to be encouraged to do so. Furthermore, it is an entirely consistent interpretation of Treasury Board policy to create presumptions of competence where testing was not available. In the Committee's view, it is appropriate to draw an analogy with Bulletin AM-2077, which provides such an interpretation. The Committee also noted that, even if the Commissioner found that Bulletin AM-2077 could not be invoked directly in support of the grievance, the flexibility available to the Force was not limited to the circumstances set out in this Bulletin.

The Committee recommended that the grievance be upheld and that the member receive payment of the bilingualism bonus for the two-month period after his unsuccessful test and for the period beginning after the expiry of the one-year waiting period for a new test.

The Commissioner accepted the recommendations of the Committee.

After being transferred, a member realized that the linguistic profile of his new position was unilingual whereas his former position had been designated bilingual. The member asked the RCMP to change the linguistic profile of the new position, claiming that before his transfer he had been given confirmation that the position would be bilingual. In view of the RCMP's inaction concerning his situation, the member presented a grievance requesting that the linguistic profile of his new position be modified and that a retroactive payment of the bilingualism bonus be awarded to him. The member alleged essentially that the transfer had been effected incorrectly.

The Level I officer determined that the grievance consisted of two parts: the first concerned the transfer per se, and the second concerned the RCMP's failure to take action with respect to the member's situation. He determined that with respect to the first part of the grievance, the grievance was not within time limits because the transfer had occurred several months before the grievance was presented. As well, he dismissed the second part of the grievance, also on the grounds of untimeliness, because in his view a decision had not been made about the member's situation at the time that the grievance was presented.

The Committee found that the subject of the grievance was not the RCMP's failure to take action to change the linguistic profile of the position, but rather the member's having been transferred to what was a unilingual position. On that basis, the Committee found that the member's grievance pertained to staffing. Since section 36 of the *Royal Canadian Mounted Police Regulations* does not give the Committee jurisdiction to examine staffing issues, the Committee declined to rule on the merits of the grievance, leaving this determination to the Commissioner.

The member requested that he be paid the bilingualism bonus retroactively to March 1987, since, according to him, he had been occupying a bilingual position since that time. The RCMP agreed to pay him the bilingualism bonus as of October 12th, 1994, the date on which he attained a "B" proficiency level in each of the categories evaluated in the second-language (SLE) examination. The member presented a grievance, arguing that regardless of his SLE results, he had always occupied positions designated bilingual, and had worked and served the public in both languages, to the satisfaction of the RCMP. The RCMP indicated that it could not authorize an additional payment of the bilingualism bonus since, according to the Treasury Board, in order to be eligible for a bonus, a member must have maintained at least a "B" level.

The Level I adjudicator rejected the grievance for the reason that the member did not have standing to grieve. He found that the member had no recourse available to him to amend or improve his situation. On the basis of a letter from the Treasury Board Secretariat, the adjudicator indicated that the RCMP had no option but to refuse to pay the bilingualism bonus to the member since he had not obtained a "B" proficiency level in the three categories during the retroactive period in question. The member submitted his grievance to Level II.

The External Review Committee found that the adjudicator had wrongly interpreted the requirements of subsection 31(1) of the *RCMP Act* relating to standing. The Committee indicated that the loss of income from the bilingualism bonus, to which the member would be entitled if his grievance was sustained, aggrieved him. The Committee added that even though the contested decision was made in light of a Treasury Board directive, the decision was in fact related to the management of the RCMP's affairs. It was appropriate to review a grievance that concerned the way in which the RCMP interpreted and applied such a directive.

The Committee then ruled on the merits. It found, as it had done in cases ERC 3300-96-009 (G-204) and ERC 3300-96-016 (G-207), that the RCMP had not used the correct criteria for eligibility for the bilingualism bonus when it had made its decision in this case. Nevertheless, the Committee considered that, even under the applicable Treasury Board directive, the member was not entitled to the bilingualism bonus for the retroactive period in question. The Committee found it inconceivable that the duties of the member, as a constable or as a special constable, would require a language proficiency lower than a "B" level. The Committee recommended that the grievance be rejected.

The Commissioner agreed with the Committee's findings on all of the issues raised, as well as its recommendation. The grievance was denied.

ii) Access to Information

The Committee issued Findings and Recommendations in three grievances which all related to the same action taken by the Force. In November 1994, the Force provided to Revenue Canada-Taxation (RC-T), at their request, information regarding those members who had received a transfer allowance in the years 1991-1993. Before providing the information, advice had been sought from RCMP Legal Services. That advice had been to the effect that RC-T could not, under the *Income Tax Act (ITA)*, demand the information without first obtaining judicial authorization to do so. However, if the Force wanted to cooperate with RC-T, it could do so without violating its obligation under the *Privacy Act* to protect members' personal information, as the provisions in the Privacy Act which authorize the disclosure of personal information would apply in this case.

As a result of the release of the information, several members had their taxes audited. Although the Force had included the value of the transfer allowance in members' taxable employment income, some members had claimed that amount as a deduction from their taxable earnings. Where the deduction had been allowed, RC-T reviewed the members' eligibility for it, and tax was assessed.

Three members whose information had been released filed grievances which were eventually referred to the Committee. They claimed that their rights to the protection of their personal information had been violated, and that the actions of RC-T and the RCMP had also violated the *ITA*. As redress, they each sought to have the Force pay them an amount equal to their reassessment.

Before a Grievance Advisory Board (GAB) was convened, the Appropriate Officer submitted a decision made by the Privacy Commissioner on complaints that had been made by some members regarding the actions of RC-T and the RCMP. The Privacy Commissioner determined that the disclosure of the information had been lawful and had not violated the members' rights.

Both the GAB and the Level I adjudicator found that the RCMP had violated the members' rights. The adjudicator upheld the grievance but did not order the payment requested, finding that the tax payable by members was a private matter between members and RC-T. The three members sought Level II adjudication on the issue of the proper redress.

The External Review Committee found that subsection 231.2(2) of the *ITA*, which requires RC-T to get judicial authorization to demand information, had not been violated because RC-T had not exerted its power to compel information, but had simply requested it and the RCMP had provided it voluntarily. The Committee found also that the Force had not violated the *Privacy Act*. It appeared that the Force had, in the past, made a mistake in fulfilling its reporting requirements to RC-T and had actually been obliged to provide the transfer allowance information separately from total income. Therefore, the disclosure being grieved had not only complied with the *Income Tax Regulations*, but it also could be considered to fit within the 'consistent use' provision of the *Privacy Act,* which authorizes the disclosure of personal information where the use to which the information is to be put is consistent with the use for which it was collected or prepared.

The Committee recommended that the grievances be denied, as it found that there had been no violation of the members' rights, and the disclosure had been reasonable. It found that, although it appeared that the Appropriate Officer had not known, at the time of the disclosure, about the reporting requirement, the disclosure had nonetheless been lawful and reasonable. The Committee expressed its view that the manner of the disclosure, however, could have been better, in that members could have been informed of the basis for the release of the information, and could have been given timely notice. However, these measures would not have affected the members' rights or the outcome of the grievance.

The Commissioner agreed with the Committee and he denied the grievances.

iii) Relocation Directive

Bottles from a member's private collection of fine wines and spirits were lost during an RCMP-ordered relocation. The member claimed the value of the lost bottles from the moving company. The company, however, refused to provide reimbursement, relying on a provision of the Government Conditions for Moving Household Goods (GCMHG) which states that such items will not be covered. The member sought assistance from the RCMP. He argued that he had not been informed, prior to the move, that the bottles would not be covered and he requested that the RCMP take up the matter with the moving company. The RCMP sought explanations from the company. After these were provided, the RCMP concluded that it had done everything within its power to assist the member. The member grieved, seeking reimbursement for his loss or financial assistance to pursue the matter in court against the moving company.

In essence, the member's arguments were that the documentation supplied by the RCMP prior to the move had failed to mention the limitation with respect to insurance of items such as alcoholic beverages. For its part, the RCMP maintained that the matter was between the member and the moving company. It also pointed out that the member's spouse had signed a waiver from the moving company prior to the move indicating that she had been informed of the applicable exclusions from coverage. The RCMP argued that this qualified as a binding acknowledgement on the part of the member.

The Level I adjudicator denied the grievance because it was not within time limits, noting that the initial grievance presentation had been stamped as "Received" outside of the 30-day limit. The adjudicator also commented that, given the existence of the signed waiver sheet, the member could not claim to be aggrieved.

The member submitted the matter to Level II. He provided documentation to demonstrate that he had delivered the grievance to Headquarters within the time limit. He also submitted that the waiver form had been tendered to his spouse while he was absent and that, in view of the previous lack of adequate information concerning exclusions, the waiver could not be considered binding.

The External Review Committee found that the member had demonstrated that the grievance had been submitted within the time limit. On the merits, the Committee found that the RCMP documentation supplied to the member prior to the move did not contain adequate information on the limitation of coverage. Furthermore, while the documentation supplied by the moving company with the waiver form did contain some information, a part of that information was incorrect and the manner in which it was provided was such that this information did not overcome the basic deficiency in the information provided by the RCMP. Despite these findings, the Committee concluded that the member had no direct claim against the RCMP under the Relocation Directive or the GCMHG because Treasury Board had provided that compensation for loss or damage to household effects is the responsibility of the moving company. The Committee stated that it was unable to find that the member would have a valid claim against the RCMP based on negligent misrepresentation but stated that fairness dictated that the member be compensated. The Committee found that, in the circumstances, this compensation could be provided under the Ex Gratia policy, but with a deduction for any amounts that the member was able to recover from the moving company. On this basis, the Committee recommended that the grievance be upheld.

The Commissioner disagreed with the Committee on the merits. He did not believe that payment should come from the RCMP because the dispute lay between the member and the moving company.

A member was transferred back to a location where he had previously been posted and where he already owned a house, which he had retained under 4.4.4 of the Relocation Directive. This provision allows members to retain a residence at a post which they are leaving without losing their right to claim expenses associated with the disposal of the retained residence. Prior to his move, he wished to travel to his future post in order to inspect his house to determine what

maintenance and improvements were required and to arrange for this to be undertaken. The house had been occupied by tenants for over two years. In order to do this, he sought authorization to take a House Hunting Trip (HHT). His request was denied by the RCMP on the basis that the purpose of a HHT is to find accommodation at the new post and the member already owned a residence there. The member grieved this decision, arguing that he should be entitled to travel to his new post to ensure that his house was in a suitable condition.

The Level I adjudicator agreed with the RCMP and denied the grievance. The member presented his grievance to Level II.

The External Review Committee first examined whether the RCMP had erred in refusing a HHT to the member. On the basis of its interpretation of policy and the conclusions it had reached on a similar issue in past Findings and Recommendations, the Committee concluded that a HHT is to be taken only for the specific purpose of finding accommodation at the new post. The member's expenses were thus not reimbursable under the provisions of the Relocation Directive allowing a HHT. The Committee also examined whether the expenses should be considered under the exceptions provision of the Directive (1.1.6), which provides that authority for payment of non-covered expenses can be sought from Treasury Board by the Commissioner. The Committee noted that the Directive expressly provides for three types of trip between the old post and the new post and that a trip to inspect one's house prior to the move is not included in these three types of trip. Concluding that the expenses for the member's trip should be reimbursed in this case would amount to recognizing a new type of trip, not already identified in the Directive and thus not within its scope. The Committee therefore did not recommend that authority for payment be sought from Treasury Board in this case. The Committee recommended that the grievance be denied.

Although recommending that the grievance be denied under the Relocation Directive as it now stands, the Committee commented that a member who has retained his house at an old post, and who

is to move back to that post, should be allowed a reimbursable trip back to the post in order to make the necessary arrangements, in light of the fact that he is not entitled to a HHT. The Committee urged the Commissioner to initiate a policy review to consider the possibility of such an amendment to the Directive.

The Commissioner agreed with the Committee on the merits and denied the grievance. He did not, however, support the Committee's suggestion that he seek an amendment to the Relocation Directive to allow expenses such as those which were incurred by the member in this case.

A member was relocated and moved into RCMP-owned accommodation. Finding the rental rates excessive, he enquired as to their reasonableness. The RCMP responded that a lower rate could not be negotiated because the charges were set by the Canadian Mortgage and Housing Corporation. Two years later, the member requested a rental charge reduction as he had learned that the RCMP had used its discretion to lower rental charges in the case of four other members. The member's claim was denied. A year later, the member asked that his request for a charge reduction be reconsidered, believing that his situation had not been properly understood. The RCMP determined that the decision to deny the member's claim was appropriate and in compliance with the Living Accommodations Charges Directive (the "LACD"). The member submitted a grievance against this decision, reiterating his position that the main issue was the significant inequality in the application of the LACD and the resulting preferential treatment, given that other members had received a reduction in their rental charges.

The Level I adjudicator denied the grievance because it was not within time limits. He noted that the member's second request did not raise any new facts or evidence. The adjudicator found that the RCMP's response was not a separate decision which revitalized the member's right to grieve, but rather a confirmation of the initial decision.

The Committee examined the issue of time limits and noted that in some circumstances, where a member asks the RCMP to reconsider its initial decision, the new decision taken by the RCMP can become grievable in and of itself. In this case, however, the Committee concluded that the RCMP's response was not a separate grievable decision, but only a restatement of its initial decision. As the initial decision had been rendered almost two years before the grievance was presented, the Committee recommended that the grievance be denied because it was not within time limits.

The Commissioner agreed with the conclusions of the Committee and supported both the Level I decision and the External Review Committee's recommendations. The grievance was therefore denied.

The member requested that he be relocated at Force expense on the basis that, following the move of his section, the distance between his home and his work place had gone from 40 to 50 kilometres. The RCMP refused to grant the member a relocation since no operational need justified it and he had not been aggrieved following his section's relocation. The member presented a grievance, stating that a relocation would enable him to be within 40 kilometres of his new work place, in conformity with section 1.1.7 of the Relocation Directive.

The Grievance Advisory Board recommended denying the grievance. The Level I adjudicator denied the grievance, finding that it was not unreasonable to request that the member travel ten additional kilometres to get to his place of work. The member presented his grievance at Level II.

Upon reviewing the case, the External Review Committee was made aware of a change in the member's situation. Since the submission of the grievance, the member had been assigned to a new position, which was located in the place where he had been working before his section had been moved. The Committee invited the parties to make additional submissions relative to the impact of

this change on the grievance. The Committee also asked the member to state the remedy he sought. The member stated that the dispute was two years old and indicated that he should not be penalized by the fact that he now occupied a different position. Concerning the remedy, the member requested that certain amendments be made to the Relocation Directive.

The Committee found that since the member's work place had changed, the reason for which the member had requested a relocation no longer existed. The Committee also noted that the member was no longer requesting a personal remedy. The Committee therefore recommended to the Commissioner that he deny the grievance since it had become academic.

The Commissioner agreed with the Committee and found that the grievance was now academic. He rejected the grievance on the basis of the Committee's findings and the decision in Borowski.

In 1993, the member was transferred to a new detachment. Between 1993 and 1996, the member rented 4 different houses, each of which were then subsequently sold, requiring him to move. In November 1996, the member was given one month's notice by his landlord to vacate his residence as it had been sold. Accordingly, the member inquired whether the RCMP would be willing to pay for the costs associated with the storage of his household effects, since the only house available for rent was fully furnished, or would extend the two-year period provided under the Relocation Directive to purchase a house. The RCMP agreed to extend the two-year period. The member then inquired about the expenses that would be covered for both the purchase of his residence and interim accommodation. The RCMP replied that the extension would cover the normal expenses associated with the purchase of his residence, and that there were no provisions covering interim accommodation, storage and movement of household effects. Three months later, the member submitted a claim for expenses related to the

purchase of his house and for storage costs. The storage period represented the time between the day the member's lease was terminated and the day his new house became available. The portion of the claim relating to the storage costs was rejected. The member submitted a grievance.

The Level I adjudicator found that the member had been told earlier that his storage expenses would not be reimbursed. The adjudicator denied the grievance on the basis that it had been presented outside the Level l time limit. The member submitted the matter to Level II. The member argued that a grievance could not have been presented earlier because he had not known, at the time, how much the storage of his household effects would cost.

The Committee noted that the *RCMP Act* provides that a grievance at Level I must be submitted within 30 days of the time the member becomes aware of a decision which aggrieves him or her. The Committee, referring to previous Findings and Recommendations, explained that the "aggrieved" requirement does not mean that expenses must already have been incurred. The Committee found that the member was aggrieved by the RCMP's first decision concerning his entitlement to reimbursement for storage expenses. Therefore, the Committee concluded that the member should have submitted his grievance within 30 days of the date he became aware of that decision. The Committee also considered whether the Force's second decision was a new decision that was grievable in and of itself, and concluded that it was not.

The Committee also examined the merits of the grievance in the event that the Commissioner disagreed with the Committee's findings regarding the time limits issue. The Committee found that reimbursement of the member's costs could not have been justified under the Relocation Directive because they are not specifically covered in the Directive and because they do not fall within its purpose and scope. The Committee recommended that the grievance be denied on the basis that the member did not comply with the time limits. In the alternative, the Committee recommended that it be denied on the merits.

The Commissioner agreed with the Committee and denied the grievance because it was not presented within the required time limits.

iv) Harassment in the Workplace

The member took part in an undercover operation which led to numerous arrests. A question later arose as to the propriety of the way the member and another undercover operator had identified one of the persons arrested. An officer in the division in which the operation took place initiated an internal investigation into the conduct of the member and the other operator. Both operators were removed from the national undercover operators' pool pending completion of the investigation. The internal investigation was later discontinued, apparently on the 'understanding' that the operators would not be reinstated in the national undercover pool and would never be used as undercover operators again. The two officers who had initiated and discontinued the investigation sent correspondence to the Drug Enforcement Directorate (DED) asking that the member not be reinstated in the national undercover operators' pool in light of allegations of misconduct. DED eventually reinstated the operators in the national undercover pool, disregarding the objections of the officers.

The member filed a complaint of harassment and abuse of authority against the two officers, arguing that his career in the undercover field had been destroyed by the accusations and unproven allegations made by them. He argued that the officers had denied him the opportunity to answer the allegations when they had ended the internal investigation and had sought to impose punitive measures on him. After the complaint was investigated, the Appropriate Officer found it to be unsubstantiated. He found that there had been no harassment, that the allegations made by the officers were not unfounded, but merely unproven, and that it had been a legitimate exercise of managerial authority to make the recommendations to DED. The member then filed a grievance against the Appropriate

Officer's decision. The Grievance Advisory Board recommended that the member had no standing, since it found that he had alleged abuse of authority but that the definition of harassment had not included abuse of authority at the relevant time. The Level I adjudicator examined the officers' behaviour to determine whether it constituted harassment under the Force's definition, and found that it did not. The member sought Level II adjudication and the matter was referred to the Committee.

The Committee found that the RCMP Harassment Policy is subservient to the Treasury Board (TB) Harassment Policy, and found that the TB policy at the relevant time included abuse of authority in its definition of harassment. The Committee noted also that actions which amount to abuse of authority would certainly meet the general definition of harassment in both the RCMP and TB policies. The relevant question was whether the actions of the officers constituted *"improper behaviour...directed at and offensive to"* the member, behaviour which the officers *"knew or ought reasonably to have known would be unwelcome"*. To amount to abuse of authority, conduct must constitute an undue use of power to interfere with or influence the career of an employee.

The Committee found that while the discontinuance of an internal investigation was a legitimate exercise of managerial power, the officers should not thereafter have continued to make allegations of misconduct by the member. The reason the issue remained unresolved was that the investigation was discontinued by the officers. The damaging accusations that were made were known by the officers to be unproven. These improper actions were offensive to the member, and the officers knew or ought to have known it. Their actions were unwelcome and constituted an abuse of authority in order to harm the member's career in undercover work. The Committee recommended that the grievance be upheld with regard to the allegations of harassment against both officers.

The Commissioner agreed with the Committee that the member met the criteria for standing to present the grievance and he also agreed on the issue of statutory time limits. As for the merits of the grievance, the Commissioner concurred

with the Committee's analysis. He directed that the C.O. of the concerned Division address a formal letter of apology to the member for failing to provide him with a harassment-free workplace. He also directed that all of the correspondence at issue be removed from all files. Finally, the Commissioner directed that a review be done to ensure that the member is not in any way barred from operating as an undercover operator. The Commissioner found unfortunate the delay in resolving this grievance.

v) Travel Directive

The member was a Division Staff Relations Representative (DSRR). He had submitted a request for reimbursement of travel expenses after travelling outside his division to attend a semi-annual meeting of DSRRs and RCMP management. The request was rejected because the member did not have his employer's permission to travel. At the time of the travel, he was subject to a suspension notice, under which he was prohibited from leaving his region. He grieved the denial of his request for reimbursement.

At Level I, the adjudicator decided not to send the grievance to a Grievance Advisory Board (GAB), because he did not think he needed the advice of a GAB to decide the issue. The adjudicator denied the grievance on the ground that the member did not have permission to travel. The member submitted his grievance at Level II.

The External Review Committee pointed out that the adjudicator had acted contrary to the Commissioner's Standing Orders (CSOs) on grievances in that he failed to send the matter to a GAB. The CSOs give a list of types of grievances which do not have to be sent to a GAB. That list does not include grievances on reimbursement of travel expenses, and the CSOs do not allow for the discretion which the adjudicator appears to have granted himself. Despite this error, the Committee determined that the case should not be returned to a Level I adjudicator, who would then obtain the advice

of a GAB. Instead, the Committee concluded that a final resolution of the question would be in the parties' interests. There was sufficient information on file to make a decision on the right to reimbursement, and the issue was now several years old.

The Committee explained that under the applicable policy, it is clear that an employee of the Government of Canada cannot make a business trip without the permission of his employer. However in its reading of the CSOs on the DSRR Program, the Committee noted that DSRRs are obliged to attend semi-annual meetings with management. The Committee therefore considered the question of whether the notice of suspension had the effect of suspending the member from his DSRR duties, thus exempting him from his duty to attend the meetings. The Committee pointed out that the notice of suspension gave a detailed description of the policing duties which the member was not to carry out, but was silent with regard to his DSRR responsibilities. The Committee's reading of the DSRR Program CSOs as a whole was that, in light of the spirit of the Program, one could not expect the notice to have the effect of suspending the member from a duty such as that of DSRR without a clear statement to that effect in the notice. The Committee concluded that the member could not be criticized for assuming that he was still a DSRR, and for interpreting the Commissioner's order to attend the meeting as having precedence over the prohibition on travel in the notice of suspension. The Committee concluded that the member was obliged to attend the meeting and that his expenses should be reimbursed. The Committee recommended that the grievance be allowed.

The Commissioner agreed with the Committee that the Level I Adjudicator had to convene a GAB but that it was preferable at this time to review the grievance on its merits. The Commissioner also agreed with the Committee that the decision to reinstate the member following the suspension had no retroactive application to the issue raised in this grievance. On the other hand, the Commissioner concluded that a suspension from duty includes the duties

that are or could be usually performed by the member. In this instance, the primary duties of the member were those of DSRR Section 12.1 of the RCMP Act does not create an obligation to list all duties performed by the member, which are often multiple. The grievance was denied.

The RCMP informed a member that he had been registered for full-time language training and that the classes were to be held in a town sixty kilometres from his place of work. The member was advised that the RCMP would cover his mileage, but only at the employee request rate (lower). For the two months before the training was to begin, the member tried to arrange with his senior NCO for a police car to be made available to him for his classes. The member was unsuccessful in this attempt, so he used his own car and submitted his first expense claim at the lower rate. He was still dissatisfied, so he attempted to obtain a more advantageous arrangement from the RCMP-once again, unsuccessfully. The member submitted his next expense claim at the employer request rate (higher) and, when the RCMP reimbursed him at the lower rate, he presented a grievance.

The Level I adjudicator denied the grievance, informing the member that at the time he had started his training, he had already known that he would be reimbursed at the lower rate for his mileage.

The Committee concluded that the grievance had not been presented at Level I within the statutory time period. The basis for the grievance was the decision that the member's travel expenses would be paid at the lower rate. This decision predated the member's presentation of the grievance by a matter of months. The Committee did not blame the member for trying to solve the dispute amicably with his superior. However, there was a time limit that had to be met for presenting the grievance. Had the member done so, he could still have continued his attempts to arrive at an understanding.

The Committee noted that although it was compelled to find against the member on the ground that the time limit had expired,

the information in the case revealed a degree of confusion in the Division concerning the criteria specified in the Treasury Board's Travel Directive for determining whether an employee is entitled to be reimbursed at the higher rate.

The Commissioner concurred in the Findings and Recommendations of the Committee and denied the grievance on the basis of non-compliance with statutory time limits.

vi) Provision of Legal Services

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The member was transferred, but was unable to sell a property he owned at the old post. The property consisted of a main residence together with adjoining land. The member was accepted into the Guaranteed Home Sale Plan (GHSP). The GHSP Contractor established a GHSP price for the entire property that was considerably less than the value at which it had been assessed two years earlier. The member, meanwhile, had been approached by an individual who wanted to purchase the adjoining land separately at a price advantageous to the member. The member sought a revised GHSP evaluation based on the main property, without the adjoining land. The Contractor calculated a revised amount, subject to verification. Shortly afterwards, however, the member was contacted and told that he had to decide immediately whether to accept the initial GHSP offer for the entire property. According to the member, when he asked what had happened to the revised arrangement, the Contractor and the Force each blamed the other for not approving it. The member eventually agreed to accept the initial offer. Prior to accepting, however, he consulted a lawyer.

The member sought reimbursement of the legal fees from the Force and, after this was refused, he submitted a grievance. Later, the member learned details of the involvement of the RCMP's GHSP national co-ordinator in rejecting the revised arrangement. The member submitted another grievance, alleging that the

arrangement was wrongfully rejected and seeking compensation for the lost separate sale of the adjoining land, and for the legal fees. The legal fees aspect of the second grievance was joined with the earlier grievance and was processed separately from the matter concerning the lost separate sale of the adjoining land. The matter before the Committee consisted of the legal fees grievances. The Level I adjudicator denied the member's claim on the basis that decisions under the GHSP are made by the Contractor, and not the Force, and therefore are not grievable under the *RCMP Act*. The member submitted the matter to Level II.

In its review, the Committee noted that it had two grievances before it: i) a grievance seeking reimbursement for the legal fees under policy and, ii) a separately-submitted grievance seeking payment of the legal fees as compensation for the Force's alleged wrongful actions. The Committee found that the member had standing to submit both grievances. While many matters under the GHSP will be decisions and acts of the Contractor, which may not be grieved under the *RCMP Act*, there remain certain decisions or acts which will have been taken by the Force. For both grievances, the decisions or acts challenged were those of the Force. Nevertheless, the Committee found that each grievance had a separate applicable time limit and that only grievance ii) had been submitted on time. The Committee therefore recommended that grievance i) be denied on the basis of time limits and it proceeded to the merits only on grievance ii).

The Committee recommended that grievance ii) be denied on the merits. The member maintained that the GHSP national co-ordinator for the RCMP did not have the authority to deny the revised arrangement, as this authority belonged to the GHSP departmental co-ordinator. The Committee found, however, that the GHSP national co-ordinator for the RCMP was the departmental co-ordinator. The member also argued that the revised arrangement had constituted effectively constituted a third offer, and that, contrary to the GHSP policy, he had not been given five days to consider this last offer. The Committee found, however, that the revised arrangement had been provisional and that no second offer had actually been

extended to the member. The Committee also found that even if it had been determined that the Force erred in failing to give the member additional time to make his decision, the member had not demonstrated how such an error caused him to incur the extra legal fees, nor how it made the Force ultimately liable for these fees.

The Commissioner agreed with the Committee that the member had standing in each grievance but that the first grievance was submitted outside the time limit. The Commissioner further agreed that the member did not demonstrate that his legal fees were included in the list of legal services to be paid. Even if the legal fees were included in the list, the member did not demonstrate why the Force should be liable for them. The grievance was denied.

vii) Classification

The member was in charge of an administrative service. Following the amalgamation of his service with another service, the responsibilities of his position increased. His superior officer believed that the position's classification level should be raised, and he asked that the position be reclassified. The classification officer decided not to raise the classification level. His decision was based on the findings of classification evaluators and on his impression that the amalgamation had not really increased the position's management responsibilities. According to him, even though the duties were more numerous, senior managers were often involved in the decision-making required of the position's incumbent. The member presented a grievance against the refusal to raise his position's classification level. He first stated that the evaluation on which the decision was based was erroneous. According to him, the comparison of his position with the benchmark positions in the classification standard did not take into account several duties of his position. Nor did the comparison that had been made of his position with a position in another division that had a higher classification level. According to the evaluators,

the member's position warranted a classification level lower than that of the other position. The member then stated that the classification officer's finding concerning senior management involvement in decision-making had no basis in fact.

The Grievance Advisory Board recommended that the grievance be rejected. According to the GAB, the position's evaluation report was sufficiently documented, so that rejecting the findings of the evaluators would mean ignoring their classification expertise. The Level I adjudicator did not rule on the merits of the grievance. He rejected the grievance for the reason that the member was not aggrieved, as required under subsection 31(1) of the *RCMP Act*. According to the adjudicator, nothing guaranteed that the member would remain in the position or that he would necessarily be promoted if the classification level were raised. The member submitted his grievance to Level II.

The External Review Committee first found that the adjudicator's decision was erroneous. The Committee explained that the classification of a position is meant to recognize the value of the work of its incumbent. Under-classifying a position means that the work is not recognized at its true value. According to the logic proposed by the adjudicator, a member could never contest his classification level. In this case, even if it were not guaranteed that the member would have been promoted if his classification level had been raised, he would at least have had that opportunity. The loss of the opportunity to advance his career represented a prejudice that was sufficient for the purposes of subsection 31(1).

The Committee then ruled on the merits of the matter. It found that the comparison that had been made with the benchmark positions had serious deficiencies. The Committee was of the opinion that the lack of explanations, as to why the group of duties encompassed by the position was less important than that in the benchmark positions, was such that it represented a fundamental error in procedure. The Committee also found that there were deficiencies in the relativity study which led the evaluators to find that the position should have a lower classification level than the other

division's position. The findings of this study suffered from a significant lack of details and explanations. As well, the Committee pointed out that, in conformity with the classification standard and the applicable precedents, the relativity study of a position must be made with other positions at a higher, lower or comparable level. The Committee found that in this case, the selection of only one position in the organization was definitely insufficient for conducting an equitable comparison. The Committee also determined that, according to the facts in the file, the classification officer's finding that senior managers often participated in the decisions relating to the member's position was erroneous. In light of the errors found, the Committee concluded that the classification exercise should be invalidated and a new classification process begun. It recommended that the grievance be upheld.

The Commissioner found that the member had standing to grieve. He did not accept, however, the Committee's recommendation on the merits of matter. He found that no error of fact or process had been committed. In his view, the decision not to raise the member's classification level contained sufficient reasons and explanations. The grievance was denied.

viii) Medical Discharge

The member was a supervisor in a busy detachment. After being off-duty sick (ODS) for a significant period of time, the member indicated that he wanted to return to duty, but not to the same busy detachment. He was told that he would not be considered for a transfer until after he had returned to full duties at the detachment. After returning to full operational duties at the detachment, the member found that he could no longer function under the stress and agreed to a medical discharge. After being served with the Notice of Discharge, and being dissatisfied with the work limitations that it listed, the member submitted a grievance against the discharge and against the Force's *"course of conduct"* from the time he had become ill

until the discharge. He submitted that the Force had violated his human rights by refusing to accommodate him when he had sought to return to duty. He sought to have the contents of the Notice corrected and the payment of damages.

After failed attempts at a mediated settlement, the GAB recommended that the grievance be denied. It found that the only persons who would have access to the contents of the Notice would be the member and the Administration & Personnel Branch, and that a recommendation for payment of damages was outside of its mandate. The Level I adjudicator denied the grievance, finding that the only relevant question in the grievance was whether the medical discharge had been reasonable and conducted in a fair manner. He was satisfied that the process of the discharge had been fair and reasonable.

After seeing the member's Level II submissions, which contained information from the member's doctor, who had participated in the medical board but was dissatisfied with the fairness of the medical board process, the Appropriate Officer withdrew the medical discharge. He then took the position that the Level II grievance was moot as a result of the withdrawal of the discharge.

The matter was referred to the Committee. The Committee asked the member for submissions regarding whether there remained any justiciable issues. The member argued that the *"course of conduct"* complained of in the original grievance had not been addressed by the withdrawal of the Notice of Discharge.

The Committee found that the grievance as it related to the "course of conduct" had not been rendered academic by the withdrawal of the Notice of Discharge. However, it found that this aspect of the grievance was not within time limits. The Committee found that there were identifiable decisions, acts or omissions in the *"course of conduct"* grievance, and that when one applied the time limits to these decisions, acts or omissions, it was clear that the time limits had not been respected. What the member saw as the Force's refusal to accommodate-the major aspect of the *"course of conduct"* grievance-was a decision made in February 1995. The

member knew or ought to have known of the Force's position at that time, and could have grieved the matter then. The Committee rejected the member's submission that his medical condition had rendered him unable to appreciate the circumstances giving rise to a grievance. The Committee recommended that the grievance against the *"course of conduct"* be denied because it had not been submitted within the statutory time limit.

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

ix) Standby Pay

The members, employed in their Division's emergency response team, wanted to be compensated for the time they were required to be on standby. Following the RCMP's refusal to grant their request, these members presented a grievance. It was denied by the Level I Adjudicator. The Grievors took their grievance to Level II, and it was referred to the External Review Committee.

The Committee asked the RCMP for a copy of the policy or directive authorizing the Force to pay for standby duty. At first, the RCMP declined to provide this, and then sent only a few Treasury Board policies on overtime pay for RCMP members. The Committee then requested that the RCMP either confirm that these were in fact the policies that it (the RCMP) interpreted and applied for the purpose of compensating for overtime within the Force, or identify the policy that was applicable. The parties were also asked for their opinion on the question of whether, in light of these policies, the Committee had jurisdiction to examine the grievance pursuant to paragraph 36(a) of the *Regulations*. Under that paragraph, grievances relating to "the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members" are to be referred to the External Review Committee.

In response, the Division grievance coordinator wrote to the Committee to request that the case be returned to the RCMP on the ground that it was not within the Committee's jurisdiction and had been referred to it in error. The members asserted that the Committee was indeed competent to examine the grievance. The Appropriate Officer in turn challenged the Committee's jurisdiction. In his opinion, it was not a government-wide policy on standby pay which applied to members of the RCMP. The Appropriate Officer did not address the Committee's question of what the applicable policy was.

The Committee concluded that it lacked jurisdiction to consider the grievance. The grievance did not fall within any of the specific categories provided in paragraphs b) through e) of section 36. Therefore, in order for the Committee to be competent to consider this matter, the grievance would have to fall into the general category described in paragraph a). In this case, however, despite the Committee's many attempts to obtain additional information about the basis for the RCMP's policy on standby pay, no information was provided to the Committee that would enable it to establish that standby pay was authorized by a Treasury Board policy. There are indeed policies governing overtime, but they make no provision for compensating members of the RCMP for their time on standby. And while numerous collective agreements between the government and the unions of certain groups within the Public Service contain clauses which provide for standby pay, there is no uniform policy concerning the payment of a premium for standby duty "that appl[ies] to government departments" and has been made to apply to the RCMP. Also, the RCMP's Administration Manual contains provisions for giving members the right to be compensated for time during which they are on standby. However, since these provisions do not appear to have been sanctioned by the Treasury Board and-even more tellingly-they do not reflect a policy made by the Treasury Board that applies to the rest of the Public Service, a grievance based on the application of these provisions may not be referred to the Committee.

The Committee also observed that subsection 22(1) of the Act stipulates that "The Treasury Board shall establish the pay and allowances to be paid to members" of the RCMP. Consequently, in view of the fact that the payment of compensation for time on standby is beyond any doubt a matter within the jurisdiction of the Treasury Board under subsection 22(1), the Committee commented that it would have expected the Appropriate Officer to answer the question the Committee had asked him, namely, what the policy applicable to the matter at issue was.

In the belief that it did not have jurisdiction to examine the grievance, the Committee refrained from making any recommendations to the Commissioner on the merits.

APPENDIX A

RCMP Act

PART II

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. (1) 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

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.

(2) A grievance under this Part must be presented

(a) at the initial level in the grievance process, within thirty days after the day on which the aggrieved member knew or reasonably ought to have known of the decision, act or omission giving rise to the grievance; and

(b) at the second and any succeeding level in the grievance process, within fourteen days after the day the aggrieved member is served with the decision of the immediately preceding level in respect of the grievance.

(3) No appointment by the Commissioner to a position prescribed pursuant to subsection (7) may be the subject of a grievance under this Part.

(4) Subject to any limitations prescribed pursuant to paragraph 36(b), any member presenting a grievance shall be granted access to such written or documentary information under the control of the Force and relevant to the grievance as the member reasonably requires to properly present it.

(5) No member shall be disciplined or otherwise penalized in relation to employment or any term of employment in the Force for exercising the right under this Part to present a grievance.

(6) As soon as possible after the presentation and consideration of a grievance at any level in the grievance process, the member

constituting the level shall render a decision in writing as to the disposition of the grievance, including reasons for the decision, and serve the member presenting the grievance and, if the grievance has been referred to the Committee pursuant to section 33, the Committee Chairman with a copy of the decision.

(7) The Governor in Council may make regulations prescribing for the purposes of subsection (3) any position in the Force that reports to the Commissioner either directly or through one other person.

R.S., 1985, c. R-10, s. 31; R.S., 1985, c. 8 (2nd Supp.), s. 16; 1994, c. 26, s. 63(F).

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 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) Material to be furnished to 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.

35. (1) For the purposes of this section, the member or members conducting a hearing to inquire into a grievance are deemed to be the Committee.

(2) The Committee shall serve a notice in writing of the time and place appointed for a hearing on the parties.

(3) Where a party wishes to appear before the Committee, the Committee shall sit at such place in Canada and at such time as may be fixed by the Committee, having regard to the convenience of the parties.

(4) The Committee has, in relation to the grievance before it, the powers conferred on a board of inquiry, in relation to the matter before it, by paragraphs 24.1(3)(a), (b) and (c).

(5) The parties and any other person who satisfies the Committee that the person has a substantial and direct interest in a grievance before the Committee shall be afforded a full and ample opportunity, in person or by counsel or a representative, to present evidence, to cross-examine witnesses and to make representations at the hearing.

(6) The Committee shall permit any person who gives evidence at a hearing to be represented by counsel or a representative.

(7) Notwithstanding subsection (4) but subject to subsection (8), the Committee may not receive or accept any evidence or other information that would be inadmissible in a court of law by reason of any privilege under the law of evidence.

(8) In a hearing, no witness shall be excused from answering any question relating to the grievance before the Committee when required to do so by the Committee on the ground that the answer to the question may tend to criminate the witness or subject the witness to any proceeding or penalty.

(9) Where the witness is a member, no answer or statement made in response to a question described in subsection (8) shall be used or receivable against the witness in any hearing under section 45.1 into an allegation of contravention of the Code of Conduct by the witness, other than a hearing into an allegation that with intent to mislead the witness gave the answer or statement knowing it to be false.

(10) A hearing shall be held in private, except that

(a) while a child is testifying at the hearing, the child's parent or guardian may attend the hearing; and

(b) when authorized by the Committee, a member may attend the hearing as an observer for the purpose of familiarizing the member with procedures under this section.

(11) Any document or thing produced pursuant to this section to the Committee shall, on the request of the person producing the document or thing, be released to the person within a reasonable time after completion of the Committee's report.

(12) Where the Committee sits at a place in Canada that is not the ordinary place of residence of a member whose grievance is before the Committee or of the member's counsel or representative, that member, counsel or representative is entitled, in the discretion of the Committee, to receive such travel and living expenses incurred by the member, counsel or representative in

appearing before the Committee as may be fixed by the Treasury Board.

(13) On completion of a hearing, the Committee shall prepare and send to the parties and the Commissioner a report in writing setting out such findings and recommendations with respect to the grievance as the Committee sees fit.

(14) In this section, "parties" means the appropriate officer and the member whose grievance has been referred to the Committee pursuant to section 33.

R.S., 1985, c. R-10, s. 35; R.S., 1985, c. 8 (2nd Supp.), s. 16.

36. The Commissioner may make rules governing the presentation and consideration of grievances under this Part, including, without limiting the generality of the foregoing, rules

(a) prescribing the members or classes of members to constitute the levels in the grievance process; and

(b) specifying, for the purposes of subsection 31(4), limitations, in the interests of security or the protection of privacy of persons, on the right of a member presenting a grievance to be granted access to information relating thereto.

R.S., 1985, c. R-10, s. 36; R.S., 1985, c. 8 (2nd Supp.), s. 16; 1994, c. 26, s. 64(F).

PART IV

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.

(4) No appeal may be instituted under this section after the expiration of fourteen days from the later of

(a) the day the decision appealed from is rendered, if it is rendered in the presence of the party appealing, or the day a copy of the decision is served on the party appealing, if it is rendered in the absence of that party, and

(b) if the party appealing requested a transcript pursuant to subsection 45.13(2), the day the party receives the transcript.

(5) An appeal to the Commissioner shall be instituted by filing with the Commissioner a statement of appeal in writing setting out the grounds on which the appeal is made and any submissions in respect thereof.

(6) A party appealing a decision of an adjudication board to the Commissioner shall forthwith serve the other party with a copy of the statement of appeal.

(7) A party who is served with a copy of the statement of appeal under subsection (6) may, within fourteen days after the day the party is served with the statement, file with the Commissioner written submissions in reply, and if the party does so, the party shall forthwith serve a copy thereof on the party appealing.

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

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.