Royal Canadian Mounted Police
External Review Committee

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REPORT
June 3, 2002

The Honourable Lawrence MacAulay, P.C., M.P.
Solicitor General of Canada
Sir Wilfrid Laurier Building
340, Laurier Avenue West
Ottawa (Ontario)
K1A 0P8

Dear Minister,

In accordance with Section 30 of the Royal Canadian Mounted Police Act, I have the honour of submitting to you the annual report of the RCMP External Review Committee for Fiscal Year 2001-2002, so that it may be tabled in the House of Commons and in the Senate.

Yours sincerely,

Philippe Rabot
Chair
## Table of contents

1. **Introduction** .................................................. i

2. **Part I - The Year in Review** .......................... 1
   - Matters heard by the Committee .................. 2
   - Disciplinary cases .................................. 3
   - Grievances concerning discharge for medical reasons .. 5
   - Other grievances .................................. 6

3. **Part II - Issues of particular interest** ............ 9
   - Stress and other personal difficulties in disciplinary matters .. 9
   - Reimbursement of expenses and preauthorizations .......... 12
   - Discharge for medical reasons .................. 16

4. **Appendix 1** ............................................ 21
   - Mandate and background of the Committee ........ 21
   - Steps in the disciplinary and grievance processes .... 22
     - Disciplinary process .................................. 22
     - Grievance process .................................. 23
     - Intervention of the Federal Court of Canada ........ 24

5. **Appendix 2** ............................................ 25
   - The Committee and its staff .................. 25

6. **Appendix 3** ............................................ 27
   - Legislative provisions (extracted from the RCMP Act) . 27
The RCMP External Review Committee is an independent agency charged with reviewing the files of members of the RCMP who feel they have been unfairly treated as a result of a decision rendered within the RCMP regarding a grievance or a serious disciplinary measure. The functions of the Committee are provided for in the Royal Canadian Mounted Police Act. In grievance matters, only certain specific questions may be referred to the Committee. However, as far as formal disciplinary measures are concerned, members always have the right to ask that their file be reviewed by the Committee if they are not in agreement with a decision resulting from the disciplinary process. Management also has a right of appeal in discipline cases. Grievances that may be the subject of a reference to the Committee, as well as the appeal process in disciplinary measures, are described in Appendix 1 of this annual report.

The decision-making authority, in matters of serious discipline and grievances, rests with the Commissioner of the RCMP. He is not bound by the Committee’s conclusions; however, he must explain his decision should he disagree with the Committee’s recommendations in a specific case.

The intervention of the Committee in this labour relations system promotes the transparency of the decision-making process in the RCMP as it ensures a neutral and impartial review of cases.

In addition to recommendations on specific cases, the Committee may make recommendations of a general nature on aspects relating to its mandate. Moreover, it can carry out research or consultations to promote discussion and consideration of important matters. In the exercise of its mandate, the Committee is supported by legal advisors who provide research and analysis to the Chair. Contact information is provided in Appendix 2.
Part I – The year in review

For several years now, the number of cases referred to the Committee has been small but the questions that they raise are becoming increasingly complex. Admissibility of evidence, procedural fairness and credibility of witnesses were among the points raised before the Committee in matters heard during the year.

In all, the Committee received 16 grievance files and 5 disciplinary appeals during 2001-2002. The Committee formulated conclusions and recommendation in 8 of the grievances and 4 of the disciplinary appeal files. One of the grievances was returned to the RCMP because the Committee did not have jurisdiction over it. The other files were still outstanding before the Committee as of March 31, 2002.

Other than the work of reviewing files, the Committee pursued exchanges with members of the RCMP on various issues of common interest. Committee staff met a working group charged with reviewing the process for presenting grievances within the RCMP and carried out discussions with the officer responsible for this project. Exchanges with managers regarding internal matters, discipline, organizational structure, the Canadian Labour Code and the strategic directions have also allowed Committee staff to better understand the current reality of the RCMP and to share with management the Committee's perspective on these various issues.

In addition, division staff relations representatives elected in 2001 met with the Committee Chair and the Executive Director for a presentation on the functions and the types of files which are reviewed by the Committee. Ad hoc discussions with division staff relations representatives have also promoted the exchange of information on various questions, principally on the matter of grievances. The Chair of the Committee also made a presentation to lawyers who represent the parties in disciplinary proceedings.
Matters heard by the Committee

All the cases which have been finalized by the Committee during the year are summarized in the issues of Communiqué available on the Internet at http://www.erc-cee.gc.ca. Summaries of decisions rendered by the Commissioner of the RCMP can also be found there.

At the beginning of the year, the Commissioner rendered his decision on two matters on which the Committee had given its recommendations in March 2001. The Commissioner, in each case, accepted the Committee’s recommendations.

In G-252, the case dealt with a member working as an investigator who considered that he was entitled to be paid the bilingualism bonus. He had asked that his position be recognized as providing bilingual service. However, a needs analysis by management determined that one of the four investigator positions where the member worked should be designated as bilingual, but not the latter’s position. The supervisor’s position was also designated bilingual. In his grievance, the member argued that he was required, in carrying out the functions of his position, to use both official languages and that the volume of work within the unit required that more than one position be bilingual. The adjudicator rejected the grievance, despite the recommendation of the Grievance Advisory Board (GAB) that the position be designated bilingual or that another study be carried out on the subject.

The Committee proceeded to examine the arguments of the Grievor regarding how the position had been designated as requiring the use of French only. It concluded that the Grievor had not demonstrated that knowledge of English was necessary to carry out his functions. Moreover, although management’s rationale may not have been clearly explained, it was not unreasonable. The Committee therefore recommended that the grievance be denied, while noting that the Grievor had the right to work only in French if his position was not designated bilingual.

The second matter, cases G-256 to G-259, was a matter of four claims for meal expenses presented by three members who had trips of less than one day. They were asking for the full amount provided for in the Treasury Board Travel Directive. Management denied reimbursement of the amounts claimed, arguing that only actual expenditures could be reimbursed. In one case, the supervisor maintained that dinner claims should not exceed $15, an amount less than provided for in the Directive. The members submitted grievances but, at Level I, the grievances were denied.

At Level II, the Grievors argued that the Directive did not apply to members of the RCMP for trips of less than one day, referring to an earlier Committee decision and on an earlier Treasury Board directive dating from 1971. The Committee reviewed the policies adopted by Treasury Board and concluded that the most recent Directive applied to members of the RCMP. The Directive must be applied uniformly throughout the RCMP and
it is the actual cost of the expenses that must
be reimbursed, up to the maximum provided
for in the Directive. However, the Committee
did not accept the supervisor's position that
meal claims could be limited to $15. The
Commissioner accepted the Committee's
recommendations and rejected the Grievors'
arguments concerning the lump sum
amounts, while ordering that their actual costs
be reimbursed. He also expressed his agree-
ment that the supervisor had no authority to
limit dinner claim reimbursement to $15.

Disciplinary cases
Four cases were finalized by the Committee
this year dealing with disciplinary matters. In
three of these cases, the alleged behaviours had
occurred while the members in question were
not on duty. In the fourth case, however, the
member was subject to proceedings for certain
behaviours while the member was on duty and
had proceeded with the arrest of a motorist.
The fact remains that, for a member of the
RCMP, exemplary behaviour is expected at all
times, both during and after working hours.
This is particularly true where the use of
firearms is concerned, which was a factor in
files D-72 and D-73.

In fact, in the first of these cases, this issue
was a determining factor. The Chair of the
Committee noted: [translation] "One fact
alone was enough to convince me that the
Appellant should not be able to keep a job
where he is allowed to carry a firearm. This
refers to an attempt in April 1998 to try to
influence the behaviour of a 15-year-old
adolescent, a member of his own family, by
drawing his service weapon".

In file D-73, the member also used his
firearm in inappropriate circumstances. Even
though he was not on duty, he had given pur-
suit to a vehicle which, according to him, was
being driven in a dangerous manner. In try-
ing to intercept this vehicle, he caused a traffic
accident with another vehicle. He then got out
of his own vehicle and drew his service weapon
and pointed it at the vehicle he had initially
pursued, which was escaping. This member
had 21 years of service in the RCMP. This
member had previously been reprimanded
because of his quick temper. He had also been
given several warnings about his demeanour
towards the public. These prior incidents
indicated that the member was not capable of
controlling his temper in various situations.

Ultimately, the use of his firearm was a critical
factor. Commenting on the member's lack of
judgement, the Committee indicated as fol-
lows: [translation] "While the appellant's rep-
resentative was doubtless not wrong to point
out that there may be circumstances where a
member would be justified in using his service
weapon, even if he is not on duty, I believe it
is important to examine the context in which
the appellant intervened. He was not driving a
police vehicle, he was not in uniform and he
found himself in a place where another police
force had jurisdiction". The Committee
recommended that the member be ordered to
resign, which the Commissioner accepted.
In file D-74, the nature of the member's misconduct pertained to inappropriate behaviour towards several women, including behaviour of a sexual nature. Four allegations were brought against the member, as a result of four separate incidents. An adjudication board concluded that three of the allegations had been established and it therefore ordered the member to resign. On appeal, it was argued that the sanction was too severe.

During its review of the file, the Committee examined how the adjudication board had assessed the evidence. It criticized the board for drawing conclusions which were not supported by the evidence, particularly regarding the temperament and the character of the Appellant as well as his credibility. The Committee agreed with the conclusion that the member had contravened the Code of Conduct but it found the sanction to be excessive. The Committee criticized the adjudication board for failing to consider how similar cases had been addressed by other boards, despite the fact that the parties at the hearing had both presented arguments on that very point. Based on decisions which addressed similar misconduct, the Committee recommended a reprimand be imposed for each of the allegations as well as a forfeiture of ten days pay for one of the allegations.

The Commissioner did not accept the Committee's recommendations. As far as the most serious allegation was concerned, he was of the opinion that it was a case where a demotion was appropriate. In his opinion, the member's behaviour deserved "the strongest condemnation". In addition to a demotion to the rank of corporal, the Commissioner recommended the transfer of the member and counselling.

In the final disciplinary file reviewed by the Committee during the year (D-75), the appeal was lodged by the appropriate officer. In this matter, the adjudication board had concluded that it did not have jurisdiction to examine the allegations of misconduct because the disciplinary procedures had not been initiated during the one-year period provided for in s. 43(8) of the RCMP Act. The appeal was focussed mostly on this issue.

At the heart of the matter was the question of knowing at what moment the divisional commanding officer, who was the appropriate officer in this case, had been advised of the unacceptable actions of the member. Was it more than a year before the allegations were made on August 2, 2000? Among the factors that made this determination difficult was the fact that the appropriate officer had been absent from his position for a certain period of time, during which he had been replaced by another officer who had knowledge of the member's actions. During the first level procedure, the adjudication board did not have the appropriate officer testify. According to the Committee, it was essential to hear the version of the principal person concerned. Thus, the Committee decided to order the holding of a hearing to hear the appropriate officer.
In the end, the Committee indicated that the evidence in fact did establish that at least four other members of the chain of command had received detailed information on this subject before the end of May 1999. Therefore, it recommended that the appeal be rejected and the Commissioner agreed with that course of action.

In several disciplinary files, including some files heard this year, the issues of stress or personal problems members were experiencing have been raised. This may be important in order to understand why misconduct occurs. It can also be considered in determining sanction. This issue is examined in Part II.

**Grievances concerning discharge for medical reasons**

Four grievances were referred to the Committee as a result of discharge proceedings on medical grounds. They involve cases G-261, G-266, G-267 and a fourth case still before the Committee as of March 31, 2002. In the first matter, the member's medical profile indicated major restrictions, which led to a notice of Intention to Discharge against the member. A medical advisor then established that the member suffered from "a physical condition that affected neuropsychological functioning" which prevented him from exercising the duties of a General Duty Constable. The member's dismissal was ordered, which led to his submitting a grievance. The arbitrator at the first level denied the grievance because the member had presented no supporting grounds. The member then asked for a decision at the second level and his file was referred to the Committee. However, the member once again presented no arguments in favour of his appeal. The Committee therefore recommended that the grievance be denied, noting however that the member had never been advised of his right to be represented by a members' representative, which the RCMP should have done. The Commissioner approved the Committee's recommendations and ordered the Chief Human Resources Officer to ensure that members of the RCMP are advised in the future of their right to representation in cases of discharge for medical reasons.

The two other cases involved entirely different sets of circumstances. Nonetheless, the Committee reached almost identical conclusions in both cases. The Committee noted that the RCMP had not taken into account the new case law from the Supreme Court of Canada in matters of accommodation and, consequently, it had not treated the members in question in a manner which conformed to its obligations. The Committee therefore recommended that the grievances be allowed. This subject is detailed in Part II of this report.
Other grievances

Five other grievances were referred to the Committee. One case (G-260) concerned a member on temporary duty who had initially been provided with a vehicle for commuting between his residence and his workplace. After a five-month period, the member started to use his own means of transportation. However, several months later, he learned that other members had received a private vehicle allowance during the time they had been assigned to temporary duties. He claimed expenses for the use of his vehicle, which was denied. He therefore submitted a grievance.

A Grievance Advisory Board (GAB) recommended that the grievance be denied because the Grievor did not seek approval from his supervisor to use his personal vehicle for reimbursable travel. The Level I adjudicator agreed that the member should be reimbursed his expenses, for one month only, because he had failed to obtain prior authorization for his expenses.

The Committee was of the opinion that the location where the Grievor had been temporarily assigned was not merely a "point of call" for him, but that it had become his workplace once his assignment began. Therefore the costs could not be reimbursed. The Commissioner agreed with the Committee.

The issue of preauthorization is often raised during various claims and this is dealt with in greater detail in Part II of this report.

In file G-262, a member had volunteered to participate in a special program established in collaboration with the insurance corporation of a province to conduct additional roadside check stops. As this was considered overtime work, he sought reimbursement of his expenses to travel to and from his shifts. The Treasury Board Directive provides for such expenses to be paid when employees work overtime. The claim was denied and the member submitted a grievance. According to the member, he was entitled to a reimbursement because he was doing overtime work and Treasury Board policies provided for the reimbursement of transportation costs incurred to reach a workplace in such cases. A Grievance Advisory Board (GAB) recommended that the grievance be denied because the work was voluntary. The Level I adjudicator agreed with the GAB and the member pursued to Level II.

For its part, the Committee was of the opinion that the grievance should be allowed. According to the Committee, members who volunteer for specific assignments do not renounce their entitlement to the allowances provided for by Treasury Board directives. Moreover, the Committee concluded that the member’s failure to obtain preauthorization for the use of his vehicle was irrelevant because it was an entitlement.

The Commissioner disagreed with the Committee’s recommendations. In his opinion, the issue to determine was if the member was required to perform the work in question.
The Commissioner said that the member was not required and that if there had been no volunteers for this type of work, the RCMP would simply not have assigned any resources to the special program. According to the Commissioner's interpretation, Treasury Board policy does not apply in such circumstances. He therefore denied the grievance.

In another matter, G-263, the case involved a claim arising from the Temporary Dual Residence Assistance program (TDRA). The member had agreed to a transfer to a position located 550 kilometres from his residence but did not go there immediately, hoping to sell his residence. Having difficulties selling it at a good price, and dissatisfied with the amount offered as a result of the Guaranteed Home Sale Plan, he asked for his transfer date to be postponed on several occasions. Finally, he decided to go to his new position to avoid losing the promotion that went with it. At that time, he settled into temporary accommodation and asked for compensation from the TDRA Program. His request was denied and he submitted a grievance which eventually reached second level.

The Committee recommended that the grievance be denied because it believed, as did the Level I adjudicator, that the Grievor himself was responsible for the fact that he had to maintain two residences. The Committee noted that the TDRA is not designed to protect members of the RCMP from the fluctuations of the real estate market, but rather to assist them when family members cannot travel with them to the new position at the same time. The Commissioner agreed with the Committee's recommendations and denied the grievance.

The other grievance cases (G-264 and G-265) dealt with claims for expenses, one for the maintenance of therapeutic equipment which had been paid for by the RCMP in the context of medical treatment for a member, the other for meal expenses.

In the first case, the Committee noted that the grievance pertained to the policy on health and safety established by the Treasury Board and thus fell under the category described in s. 36 a) of the RCMP Act. As for the claim itself, the Committee was of the opinion that the RCMP was under no obligation to pay for the maintenance of the equipment in question, even if it had paid for the purchase costs. The denial of the grievance was therefore recommended, which the Commissioner supported.

In the second case, the member was assigned to the protection of a foreign dignitary which required him to stay in a hotel room for several hours. He ordered his dinner from the hotel room service and claimed an amount that exceeded the maximum allowed in the Travel Directive by some $15. He was only reimbursed the maximum allowed. His grievance on this subject was denied. At the second level, the member stated that he had to purchase a room service meal because the security work he was performing prevented him from leaving the hotel room.
The Committee recommended that the grievance be allowed because the meal was necessary and was not extravagant. Moreover, the member had a health condition requiring him to avoid menu items that were priced more cheaply. The Committee noted that the Directive allowed for exceptions to the rules for reimbursable meal rates and this case seemed to be an exceptional one. The Commissioner agreed with the Committee’s recommendation, principally because of the member’s health condition.
Part II – Issues of particular interest

Among the questions dealt with by the Committee this year, several themes emerge which are noteworthy. This part presents three themes which were raised in various files, not only this year but also in previous years. These issues may make it possible to better understand the complexities that exist in the RCMP in the area of labour relations.

Stress and other personal difficulties in disciplinary matters
In the last few years, stress was invoked in a variety of contexts as a mitigating factor before adjudication boards appointed under s.43 of the RCMP Act: for example, stress related to work, to marital problems, to various working conditions, such as being in an isolated post, or even stress resulting from proceedings before an adjudication board. Stress has also been recognized by labour adjudicators as a mitigating factor that can result in a reduced sanction for some employees. In Canadian Labour Arbitration, Brown and Beatty state that the sanction can be modified when an employee’s misconduct is "the result of a reasonable and bona fide mistake, domestic and emotional problems, physical pain, a physical condition, the wrongful orders of a superior, alcoholism or extreme inebriation, or a gambling habit."

In D-72, the Committee noted that the adjudication board had to consider the evidence of an expert regarding stress. This expert established that the violence suffered by the member in his childhood and other violence he had witnessed in his family environment had contributed to him becoming a more violent individual. The Committee also noted that the stress of having to raise a child with a disability and another one who was delinquent could not have done otherwise but have had a profound effect on the member. However, the Committee noted that the allegations against the member were not isolated and included numerous acts of family violence. Taking that into consideration, the Committee recommended that the member be ordered to resign.

In D-73, the Committee rejected the member’s argument that the misconduct was strictly the result of the stress that he was experiencing at the time.
The Committee noted that the member’s own expert witness contradicted him on that point, attributing his behaviour in part to his attitude towards women. The Committee did point out, however, that the member’s lack of prior discipline over such a long period of service was probably a good indication that the incidents of misconduct were largely attributable to stress and the consumption of alcohol rather than to fundamental character flaws.

Stress, along with other personal difficulties suffered by a member, can sometimes play a part in lessening the sanction imposed in cases of discipline. However, it is generally expected that members must take reasonable measures to alleviate their stress. If they fail to do so, they will be held to account for their actions.

In a 1999 case (D-62), the member was the subject of three allegations of disgraceful conduct regarding an incident in which he had allegedly driven while impaired, sought to flee a roadside police check, hit another vehicle, engaged in a high-speed chase and tried to run away on foot, before eventually stopping. He admitted to the particulars of two allegations. The adjudication board found those two allegations to have been established and ordered the member’s demotion. The Committee indicated that the strong medical evidence that was before the board established that the member’s misconduct, as well as his alcohol dependency, was largely attributable to Post-traumatic Stress Disorder (PTSD), from which he was suffering at the time of the misconduct. The expert evidence before the adjudication board was also impressive in indicating a very positive prognosis for the member’s recovery from the alcoholism that was brought about by the PTSD. Three leading experts on PTSD provided evidence which established a clear linkage between the member’s actions and his suffering from PTSD.

The Committee said in that case that the adjudication board should have considered this evidence in its assessment of the member’s judgment, leadership ability and other attributes. The Committee considered that the evidence provided assurances that no such misconduct could reasonably be expected to recur. In these circumstances, the Committee indicated that demotion was not appropriate. The Committee recommended that the appeal be allowed, and that the sanction be varied to include a forfeiture of ten days’ pay, a reprimand and recommendations for a transfer and continued counselling. The Commissioner, however, disagreed with the Committee and dismissed the appeal.

In case D-67, the member admitted to the particulars of three allegations of disgraceful conduct arising out of one incident which included physical assaults against his girlfriend, uttering of a death threat and failing to properly secure and store a service revolver. The adjudication board found the three allegations to have been established. The Committee indicated that the board had failed to justify that the member’s evidence was not credible. The Committee found that, based on the evidence, the member’s behaviour was
out of character and that the member had a good rehabilitative potential. His misconduct appeared to have been directly influenced by alcohol and depression. In these circumstances, the Committee was of the view that an order to resign was not an appropriate sanction and recommended that the appeal be allowed, and that the sanction be varied to include a forfeiture of ten days’ pay, a reprimand and continued professional counselling. The Commissioner did not agree and dismissed the appeal. The member sought judicial review of this decision in the Federal Court of Canada, but was unsuccessful.

Then, in D-68, the member disputed an allegation that he had sexually assaulted a member of the public who had visited him at home. The member admitted that he had sex with the individual in question but maintained that the relationship was entirely consensual. The adjudication board found the allegation to have been established. One of the witnesses testified that aboriginal members serving in the North, such as the member, faced many stresses. The Committee, in its review, first noted that the member bore the burden of proof to demonstrate that his actions were involuntary and not for the Force to prove intent. The Committee found that the board had properly assessed the expert evidence which established the member was suffering from PTSD, but that PTSD was not the sole cause of the member’s misconduct.

Finally, in D-70, the member was the subject of four allegations of disgraceful conduct regarding incidents in which he had allegedly broken the front door of his girlfriend’s residence, entered and physically assaulted her, resisted arrest and breached the terms of his release from custody. The member testified that he could not remember the events that had occurred at the residence. He pleaded that he had been functioning as an automaton as a result of an adverse drug reaction. The board denied the member’s defense and found three allegations to have been established.

The matter has not yet been heard.

Given the weaknesses in one of the testimony of an important witness, the Committee recommended that the appeal be allowed against the board’s finding that one allegation of misconduct was established. However, the Commissioner did not agree with the Committee and dismissed the appeal. The member applied for judicial review of that decision in the Federal Court of Canada.
The Committee concluded that the board had made reasonable findings regarding the second expert witness. The Committee noted that while this expert had come to the conclusion that the member suffered an adverse reaction to the medication he was taking, his evidence did not establish that, on the night of the incidents, the member was unable to exercise any control over his actions as a result of the effect of his medication. The Committee recommended that the appeal be dismissed and the Commissioner agreed.

In conclusion, it appears that stress can be a mitigating factor but that serious, convincing evidence will be needed to establish that the stress contributed to the behaviour and, equally important, that the member made serious efforts to manage the stress.

**Reimbursement of expenses and preauthorizations**

In many grievances referred to the Committee on matters relating to expense claims, management invoked the absence of preauthorization as the main reason for refusing to pay. Under s. 22 of the *RCMP Act*, Treasury Board is responsible for establishing the pay and allowances to be remitted to members of the *RCMP*. The *RCMP* must therefore ensure, in the settling of claims, that Treasury Board has granted the power to remit such an allowance.

In addition to their regular pay, *RCMP* members may receive additional allowances in specific circumstances, such as overtime, travel on government business, relocation as a result of a transfer and special expenditures incurred as a result of filling a position in an isolated region.

While the right to allowances arises from Treasury Board directives, the *RCMP* Administrative Manual reiterates these directives and establishes the claims procedure. Generally, one of the determining criteria that make the *RCMP* responsible for an expenditure will be the preauthorization. In fact, when it is expressly stated in a directive that the member must obtain the authorization of a superior before incurring an expense, the *RCMP* could be justified in not reimbursing expenditures made in contravention of such a requirement, unless exceptional circumstances exist.

Generally, working conditions are governed by the collective agreements applicable to each category of employee, with additional terms specified in the *Public Service Terms and Conditions of Employment Regulations*. As members of the *RCMP* are not governed by a collective agreement, it is this regulation which applies to members of the *RCMP*. For overtime allowances, the *RCMP* administrative policy essentially restates the provisions of this regulation, and, in particular, stipulates that overtime hours will not be recognized as such unless the member is required to work after the hours of work recorded on his work schedule.
The words "be required to work" have been interpreted to include preauthorization by the employer to perform overtime work. However, the policy states that the preauthorization must be obtained only to the extent possible, thereby making provision in exceptional cases for urgent situations or where it is impossible to obtain authorization before performing the duties.

When the overtime has been authorized by the employer, a question may still arise regarding preauthorizations. For example, must the member who has to use his vehicle to travel to a workplace to perform overtime work ask for authorization in order to be reimbursed for his travel expenses?

In G-262, the RCMP refused to reimburse a member such expenses, which had been incurred to commute between his residence and the designated workplace to perform overtime. In this matter, the Committee had recommended that the grievance be allowed because, in its opinion, the fact that the member had not obtained preauthorization was irrelevant. As the overtime had been approved, the only relevant consideration for the Committee was to determine if the member "is required to use a means of transportation other than normal and reasonable public transit or a means of transportation offered by the State". However, nothing in the file mentioned the availability of such services.

For his part, the RCMP Commissioner pointed out that the member volunteered to participate in a roadside check program, which meant that the member was not "required" to perform overtime and that, consequently, the Travel Directive did not apply.

The requirement for preauthorization can be found in various RCMP policies. In fact, in the majority of cases, the policies state explicitly the necessity for the member to ask permission before incurring any costs whatsoever.

From 1999 to 2002, the Committee made recommendations in about 40 files for allowance claims. The requests for allowances dealt with claims for meal expenses, reimbursement of travel expenses, costs linked to the use of a personal vehicle, costs associated with relocation after a transfer, legal fees for the sale of a house, rental costs, storage costs, bilingual bonus, legal aid costs and payment for stand-by hours.

Several of these grievances raised the issue of preauthorization. In order to rule on the right of a member to reimbursement of allowances, the Committee had to determine on several occasions whether the member had for all intent and purpose received the required authorization before incurring an expense, thus committing the RCMP to assume responsibility for that cost.
The two areas in which claims for allowances which are the subject of grievances most often are: the costs associated with business travel and the relocation costs when a member is the subject of a transfer.

**Expenses relating to business travel**
Here as well, it is Treasury Board which has jurisdiction on the issue of allowances. The *Travel Directive* was adopted in 1969 and modified several times since, most notably to adjust the compensation rates. Generally speaking, it provides that all business travel must be preauthorized, subject to certain exceptions. One of these exceptions can be found in s. 1.1.6: Where preauthorization is not possible, owing, for example, to a change in itinerary enroute or emergency travel. In those circumstances, the officers who would theoretically have preauthorized the business travel must determine if they will authorize it after the fact.

In G-217, the member was a Divisional Staff Relations Representative (DSRR) who presented a request for reimbursement of travel expenses, as a result of travel outside his division to attend a meeting with his counterparts from other divisions. The reimbursement had been denied because he did not have his employer's permission to travel since, at the time of the travel, he was the subject of a notice of suspension. According to the terms of this notice, he was forbidden to travel outside his assignment region.

In its review of the file, the Committee indicated that an employee could not normally travel without his employer's permission. However, the Committee was of the opinion that this probably was an exceptional case since the member not only had the right but also the obligation to make the trip to participate in a meeting that was mandatory for DSRR's.

As far as the Commissioner was concerned, the fact that the member had been suspended from his duties as a member of the RCMP meant that he was not to attend any DSRR meetings. The Commissioner indicated that the suspension of duties also covered those duties normally carried out or which could normally be carried out by a member, including the DSRR functions. He therefore denied the grievance.

In a matter heard this year, G-265, the member had claimed reimbursement for the cost of a meal while he was travelling on business (see Part I above). The member's supervisor took the position that a preauthorization should have been obtained.

Here, the Committee felt that the member had found himself in an exceptional situation and that, consequently, the total cost of his meal should be reimbursed. This is an instance where an exception should be made to the general rule. The Commissioner agreed to the reimbursement but only because of the member's health condition.
Relocation expenses

On April 1, 1999, Treasury Board adopted a new directive intended to address all questions relating to the relocation of a person transferred in the context of his work, a directive that applies to certain organizations on a test basis. This is known as the Integrated Relocation Program (IRP) and it applies to the RCMP. Prior to that date, the relocation allowances were regulated by the Treasury Board Relocation Directive, which was essentially replicated in the RCMP’s internal policies.

The new directive applies to all persons who are authorized to move their household effects from one residence to another when their workplace is relocated more than 40 kilometres away. Consequently, as soon as a member is subject to a change of workplace and he is authorized to move, he can claim expenses resulting from his transfer. The issue of preauthorization has nonetheless been raised in several grievances brought before the Committee.

In G-151, the Committee concluded in 1995 that if expenses arise before the authorization has been granted, the RCMP has no obligation to reimburse them. Specifically, the Committee indicated that, according to the Directive, expenses incurred before the relocation is approved should not be authorized by the RCMP unless a subsequent approval has been given. In the case of the Grievor, the approval was never granted and it was therefore recommended that the grievance be denied. The Commissioner agreed.

This year, in G-263, the member had agreed to a transfer to a position located 550 kilometres from his residence. Because he had not sold his house, the applicant asked for Temporary Dual Residence Assistance, which was refused. He submitted a grievance, which a GAB recommended be denied since the TDRA was only to be granted when an operational reason justifies the transfer of the member and, according to the GAB, there was no operational reason. The adjudicator denied the grievance.

The Committee, for its part, concluded that the Relocation Directive which includes provisions related to the TDRA contains no requirement that there be an operational justification for the transfer. In addition, the member had been formally advised that he was being transferred to a new position and that the transfer had thus been authorized. The Committee concluded that the real issue was whether the member could have managed the situation in such a way as to avoid experiencing a financial loss. The Committee concluded that the member himself was responsible for the fact that he had to maintain two residences.

The Committee also concluded that the member had been sufficiently indemnified by the payment of one month of TDRA. The Commissioner agreed and denied the grievance.
We can see that on matters of expense claims, preauthorizations may be a determining factor. In most cases, the guiding principle is that one must ask for such authorization in order to gain the right to claim reimbursement of expenses later incurred. It is thus preferable, when in doubt, to make every effort to seek such authorization.

**Discharge for medical reasons**

When, in the opinion of a designated officer, the ability of a member to continue to serve with the Force is impaired because of a disability, a medical board is to be appointed for the purpose of determining the degree of the member’s impairment. The medical board consists of at least three medical practitioners; the member can nominate one physician to the board. The board reports its findings and recommendations to the appropriate officer (usually the Commanding Officer) and to the member.

It is important to point out, however, that internal RCMP guidelines for the medical discharge process provide that the discharge will be a measure of last resort in human resource management. It is only when the member cannot meet the requirements of the job or of other available jobs within the member’s relevant work category, or is unwilling to accept other available jobs for which the member is qualified, that the discharge process ensues.

However, if a member is able to establish that the impairment which afflicts that member is considered to be a physical or mental disability, the Force has an obligation to demonstrate that it cannot reasonably accommodate that member’s disability. This obligation stems from provisions in the *Canadian Human Rights Act* and a recent decision of the Supreme Court of Canada: *Meiorin*.

**The Meiorin Decision**

This issue of discrimination in the employment context was recently addressed by the Supreme Court of Canada in the "Meiorin" decision (*Public Service Employee Relations Commission v. BCGSEU*, [1999] 3 SCR 3). That decision set out criteria that employers must follow in order to establish that an employment standard is a Bona Fide Occupational Requirement or BFOR.

Ms Meiorin was a forest firefighter employed by the government of British Columbia. She performed her duties well and received satisfactory performance evaluations. After three years on the job, she failed part of a test that had been implemented to measure the aerobic capacity of firefighters. The test had been devised following a recommendation made by government researchers, on the basis that forest firefighters should be in good physical shape in order to maintain their own safety and that of their colleagues. After Ms Meiorin failed part of this physical test, she was informed that she would be discharged from her position for failing to meet a legitimate occupational standard. This decision was challenged by her union, all the way to the Supreme Court of Canada.
In its analysis, the Court developed a three-part test that has now become the standard for such cases. In the first part of the test, the employer must show that it adopted the standard for a purpose rationally connected to the performance of the job. In assessing the rational connection, the employer has to provide three things:

1. Evidence on the purpose of the challenged policy or standard. The Supreme Court indicated that the goal of employment policies or standards is likely to fall into one or both of two general categories: safety or efficiency. In the case of the RCMP, the goal of the medical standard for members obviously falls into both categories.

2. Evidence that the requirements of the job are objective in nature. For the RCMP, it has been demonstrated in the past that the requirements of a member’s job are objective.

3. Evidence that there is a rational connection between the general purpose identified in (1) and the objective requirements of the job identified in (2). If there is no connection between the general purpose of the policy or standard and the specific tasks to be fulfilled, the policy or standard will fail at this point. It must be rational. This point requires to consider how the purpose of the policy or standard adopted relates to the “task properly required” to fulfil the job.

In the second part of the test, the employer must establish that it adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose. At this step, questions can be asked about the development of the policy or standard: What were the circumstances surrounding the adoption of the policy or standard? When was it created, by whom and why? What were the considerations underlying the development of the standard?

The third and final element of the test requires the employer to demonstrate that it is impossible, without undue hardship, to accommodate an individual employee who is excluded by the standard because of the employee’s condition. This is the most challenging part of the test and it places a significant onus on the employer, who must basically demonstrate the degree of hardship that would result from providing a job, inside the organization, for the employee.

Here the Supreme Court explained that an occupational standard must accommodate factors relating to the unique capabilities and inherent worth and dignity of every individual, up to the point of undue hardship. In other words, the employer must focus on how an employee can continue to play a productive and meaningful role in the organization, not on why an employee is incapable of performing to the ideal standard.
Some key questions that can be asked at this stage are: Did the employer look at alternative standards to get the job done? Is the standard properly designed in order to minimize the burden on those required to meet it? Does the standard itself provide for individual accommodation in some cases? Is it essential that all employees meet the occupational standard for the employer to accomplish its goals? In that last instance, information about the treatment of other employees placed in similar situations may be critical in establishing whether or not accommodation is possible. Indeed, if an employer has accommodated other employees in the past, it will be much more difficult to successfully argue that further accommodation is impossible. To that end, access to information held by the employer may be essential to the analysis.

Again, the onus is on the employer to present evidence. The nature of the evidence must be serious and persuasive in nature. The evidence would usually be statistical, medical or presented by experts. The courts have said that evidence based on “common sense,” assumptions or impressions will not be sufficient.

Finally, the employer must show what actions it took to try and accommodate the employee or, in the alternative, why it is simply not possible to accommodate the employee within the organization.

What the third part of the test means in practice

Employers now have more onerous obligations in trying to accommodate employees who suffer from a disability. Some authors believe that this requires employers to look at all the positions within their organization and try to adjust, adapt or modify existing positions for a disabled employee. If that is not an option, then the employer may have to create a new position.

For the RCMP, there seem to be important consequences since existing Force policy does not reflect the criteria of the Meiorin decision. In G-266 and G-267, the Committee Chair wrote that “the critical failing of the Force’s medical discharge process, as I see it, is that it is almost entirely focussed on determining what are the duty restrictions stemming from a regular member’s disability. Far too little attention is focussed on determining what are the duties that the member can still perform and whether, based on that information, it appears that the member could continue to play a productive and meaningful role as a regular member of the RCMP.”

In assessing whether or not an employer faces undue hardship, several factors can be considered. The Supreme Court, in other decisions, has indicated that issues such as financial cost, impact on employee morale, safety concerns and the size of the employer’s organization are all relevant in making that assessment.
Financial cost can become an undue hardship, but only where the cost is so high that it threatens the employer’s ability to function, for example because the accommodation would have a serious impact on financial viability or that it would fundamentally change the nature of the employer’s operations. Again, the burden here rests with the employer to prove that an analysis was done to quantify the costs of the accommodation.

Impact on employee morale is a significant concern and can become an undue hardship in some instances. However, the Supreme Court has said that "It is a factor that must be applied with caution." (Central Okanagan School District No. 23 v. Renaud [1992] 2 SCR 970).

For example, if employees have stereotypical attitudes about whether a person with a disability can work alongside other employees, this will not be a relevant consideration. If accommodation causes serious disruption for established rights of other employees, say because of redefining of job duties or loss of seniority rights, then it is a factor that must be considered.

Safety concerns are an important factor in the assessment. An accommodation that would jeopardize the safety of employees will often constitute undue hardship. But if only the safety of the employee in question is concerned, then the employer might have to assess the willingness of that employee to assume the risk to their own safety. In Bhinder v. Canadian National Railway Co. [1985] 2 SCR 561, the Supreme Court pointed out that "since no greater danger would be caused to others because of his non-compliance, any decision to accept greater risk should be left to Bhinder himself." As well, the Ontario Human Rights Commission provides, in its Policy and Guidelines on Disability and the Duty to Accommodate, that "Where possible, persons with disabilities should be allowed to assume risk with dignity, subject to the undue hardship standard."

Thus, an employee who is willing to accept a certain measure of risk, in order to continue working, could be accommodated, particularly if there is no risk to the health or safety of others.

The size of the employer’s operations is also a very important factor. Obviously, a very small employer has neither the resources nor the flexibility to make broad accommodations for employees. A large employer, on the other hand, usually has more flexibility in adjusting the job duties of positions, assigning work to different individuals, creating new positions in the organization or instituting new methods of operation.

The courts have indicated that there are also other factors that can be considered in making an assessment of whether or not an employer is facing undue hardship in accommodating an employee. These include issues such as interchangeability of the workforce or limits
imposed by the employer’s facilities. The courts have said that there may well be other factors that an employer could invoke but, in all cases, it is up to the employer to demonstrate with convincing evidence that the hardship faced in accommodating an employee would be overbearing.

Based on all the factors described, it seems certain that, as pointed out by the Committee in G-266 and G-267, the Force will have “to be willing to make compromises when it undertakes efforts to accommodate disabled members, which may result in situations that may be less than desirable from the organization's standpoint.”
MANDATE AND HISTORY OF THE COMMITTEE

Established in early 1987, the Committee was one of two entities created as civilian oversight agencies for the RCMP. The other being the Commission for Public Complaints Against the RCMP. The first Chair of the Committee was the Honourable Mr. Justice René Marin, who from 1974 to 1976 had chaired the Commission of Inquiry relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police. In 1992, the Vice-Chair, F. Jennifer Lynch, Q.C., became Acting Chair of the Committee, a position which she held until 1998. Philippe Rabot then assumed the position on an acting basis and, on July 16, 2001, he was appointed Chair of the Committee.

The RCMP External Review Committee is an independent, neutral agency established under the Royal Canadian Mounted Police Act. Its main mandate is to provide recommendations to the RCMP Commissioner concerning Level II grievances, appeals against disciplinary measures imposed by adjudication boards, and appeals of discharge and demotion decisions. If the Commissioner does not accept the recommendations of the Committee, reasons must be provided.

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

21
the RCMP Commissioner must refer to the Committee. These are 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*; e) administrative discharge on the grounds of physical or mental disability, abandonment of post, or irregular appointment.

The Committee Chair can dispose of matters referred to the Committee either on the basis of the material in the record or following a hearing. 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 and ensure that members of the RCMP are treated in a fair and equitable manner.

**Steps in the Disciplinary and Grievance Processes**

**Disciplinary Process**

*Adjudication Board (Level I)*
The "Appropriate Officer" is responsible under the *RCMP Act* for initiating a hearing before an Adjudication Board when he or she believes that a member has contravened the Code of Conduct and that formal disciplinary action is warranted. The Board is composed of three officers, one of whom must be a graduate from a law school recognized by the law society of any province. Formal disciplinary action is warranted when the alleged contravention is serious in nature and informal action (such as training, counseling, transfer, closer supervision) would constitute an insufficient remedy.

When a matter is referred to the Board, it holds a hearing to inquire whether the events in fact occurred and if the allegations are proven. If they are, the Board then determines the appropriate sanction.
Commissioner and Intervention of the External Review Committee (Level II)
If the member or the Appropriate Officer is dissatisfied with the decision of the Adjudication Board, either may appeal the decision to the Commissioner (Level II).

Prior to making a decision, the Commissioner is required to refer the matter to the Committee, which studies the case and makes findings and recommendations. The Commissioner is not bound by the recommendations; however, if he rejects them, he must provide reasons as required by subsection 32(2) of the RCMP Act (see Appendix 3).

Grievance Process
Grievance Advisory Board and Adjudicator (Level I)
Section 36 of the RCMP Act gives the Commissioner the authority to adopt rules regarding grievance presentation and consideration. The Grievance Advisory Board (GAB) is created pursuant to these rules or Standing Orders.

When a member of the RCMP is aggrieved, they can present a grievance, under certain conditions, by following a prescribed procedure. This includes specified time limitations. An Adjudicator is then seized with the grievance. They must decide if the grievance is valid and whether or not to convene a GAB, in accordance with subsection 12(2) of the Commissioner’s Standing Orders (Grievances), 1990.

The Adjudicator will not convene a GAB if:

1. the member was not aggrieved (subsection 31(1) of the RCMP Act) and the grievance was not presented within 30 days of the incident giving rise to the grievance (subsection 31(2)(a) of the RCMP Act, see Appendix 3);

2. the subject of the grievance is a position expressly excluded from the grievance process (subsections 31(3) and 31(7) of the RCMP Act, see Appendix 3);

3. the subject of the grievance is a job opportunity bulletin;

4. the grievance shall be allowed; or

5. a request from the grieving member not to convene a GAB should be granted.

Otherwise, the Adjudicator convenes a GAB and appoints two officers and one Division Staff Relations Representative (DSRR). The GAB convenes to consider the member’s grievance and then presents its findings and recommendations. The Adjudicator then renders a decision, without being bound by the GAB’s findings and recommendations.
Commissioner and Intervention of the External Review Committee (Level II)
A member who is not satisfied with the decision of the Arbitrator can ask that his grievance be referred to Level II. For subject matters defined in section 36 of the Regulations, the Commissioner constitutes Level II. Prior to making a decision, he must refer the file to the Committee. Again, the findings and recommendations of the Committee are not binding on the Commissioner but, if he rejects them, he must provide written reasons.

Intervention of the Federal Court of Canada
The Commissioner of the RCMP is an agent created by a federally enacted statute and, as such, falls under the jurisdiction of the Federal Court pursuant to the Federal Court Act. If a member of the RCMP is dissatisfied with a final ruling of the Commissioner, that member may apply to the Federal Court (Trial Division) for a review of the decision.
The Committee and its staff
Philippe Rabot
Chair
Norman Sabourin
Executive Director and Senior Counsel
Odette Lalumière
Legal Counsel
Madeleine Riou
Legal Counsel
Lorraine Grandmaitre
Office Manager
Joanne Binette
Administrative Assistant

Address
The Committee's offices are located in Ottawa, although the Committee can hold hearings elsewhere as required. The Committee's address is as follows:

P.O. Box 1159, Stn. B
Ottawa, Ontario
K1P 5R2
Telephone: (613) 998-2134
Fax: (613) 990-8969
E-mail: org@erc-cee.gc.ca

The Committee’s publications are available on its Internet site:
www.erc-cee.gc.ca
LEGISLATIVE PROVISIONS
(extracted from the 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.
Royal Canadian Mounted Police External Review Committee

Duties

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

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

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

Rules

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

(a) the sittings of the Committee;

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

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

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

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

Annual Report

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

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

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.

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

EXCERPT FROM THE RCMP REGULATIONS (1988)
(Section 36: grievances that can be referred to the Committee)

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

(a) the Force’s interpretation and application of government policies that apply to government departments and that have been made to apply to members;
(b) the stoppage of the pay and allowances of members made pursuant to subsection 22(3) of the Act;
(c) the Force’s interpretation and application of the Isolated Posts Directive;
(d) the Force’s interpretation and application of the R.C.M.P. Relocation Directive; and
(e) administrative discharge for grounds specified in paragraph 19(a), (f) or (i).