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Dr. Leslie Harris, O.C., Ph.D

**MESSAGE FROM THE
COMMISSIONER**

I was appointed Commissioner of the Royal Newfoundland Constabulary Public Complaints Commission by Order-in-Council dated June 18, 2003. The reporting period for this Annual Report is from April 1, 2002 to March 31, 2003, during which time Leslie Harris, O.C., Ph.D. was Commissioner. Dr. Harris was the first Commissioner of the Royal Newfoundland Constabulary Public Complaints Commission. He was appointed contemporaneously with our statutory creation in February 1993. He served loyally and with distinction in that capacity for ten years before retiring in May 2003.

On behalf of everyone at the Commission, I would like to take this opportunity to thank Dr. Harris for his fine service to this Office.

Lois Hoegg, Q.C.

LOIS HOEGG, Q.C.
Commissioner

INTRODUCTION

We herewith provide the Annual Report of the Royal Newfoundland Constabulary Public Complaints Commission for the period of April 1, 2002 to March 31, 2003. The Commission was established by legislation in May 1993 and operates pursuant to Section III of the *Royal Newfoundland Constabulary Act, 1992*.

The Royal Newfoundland Constabulary Public Complaints Commission was created to provide members of the public with an independent forum for their complaints against Royal Newfoundland Constabulary officers. The Commission is mandated to investigate, hear and decide complaints from the public alleging misconduct by RNC members in carrying out their duties. As one of many civilian oversight agencies in this country, this office is an important accountability mechanism for the exercise of those police powers.

Our police force exists for the benefit of our society and the protection of its citizens. For it to be an effective institution, it must enjoy public confidence. When that confidence is called into question by a complaint against a Constabulary member, a fair and impartial investigation and adjudication of the complaint . . . fair to both the complainant and the respondent officer . . . helps to restore respect for this institution. Without this kind of check on improper use of police powers, citizens lose respect not only for the police, but other government institutions and authority. This is why the Commission's public protection mandate is so important to our social values.

The Commission works closely with the members, administration and internal review section of the Royal Newfoundland Constabulary. As the relationship between this office and the RNC evolves, it is incumbent on both parties to work together in an atmosphere of trust and understanding. Therefore, the RNC must understand the necessity for this institutional accountability and the Commission must appreciate the pressures and responsibilities of police work. The Commission believes it has made a positive contribution to the protection of the rights and privileges of our citizens and thereby to our fair and democratic society. We hope to continue to do so in future.

OVERVIEW

The Role of the Commission

The Royal Newfoundland Constabulary Public Complaints Commission functions independently of both the Department of Justice and of the Royal Newfoundland Constabulary, reporting directly to the people of Newfoundland and Labrador through the Speaker of the House of Assembly. The role of the Commission, under powers conferred through the *Royal Newfoundland Constabulary Act, (1992)*, is to receive and maintain a registry of complaints made by members of the public against police officers; to monitor internal Royal Newfoundland Constabulary Public Complaints investigations and the Chief's disposition of such complaints;

to hear, investigate, and decide appeals of these decisions of the Chief of Police, and complaints against the Chief himself. Additionally, it is open to the Commissioner to make recommendations to appropriate authorities respecting matters of public interest related to police services.

The Commission has jurisdiction over Royal Newfoundland Constabulary officers of all ranks in the province of Newfoundland and Labrador with respect to complaints alleging improper exercise of police power, or of police misconduct in the exercise of their duties.

The Commission must receive a signed complaint to conduct an investigation. It cannot commence an investigation on its own initiative. Neither can the Minister of Justice direct the Commissioner to undertake an investigation or review. Complaints from third parties can only be accepted by the Commissioner with the consent of the person subjected to the misconduct.

To Reach Us

We can be reached by mail, email, telephone, or in person at

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APRIL 1, 2002 TO MARCH 31, 2003 IN REVIEW

Investigator's Manual

In keeping with our investigative mandate pursuant to Section 27 of the *Royal Newfoundland Constabulary Act, 1992*, the Commission launched a review of our investigative practices and processes during this reporting period. The review culminated in the production of a revised *Investigator's Manual*. This *Manual* provides operational guidelines for Commission investigators in an effort to ensure consistency in investigative practices. It is publically available.

Appointment of Chief Adjudicator

On October 18, 2002, Mr. James Kean, retired Provincial Court Judge, accepted the appointment of Chief Adjudicator provided for by Section 29(2) of the *Royal Newfoundland Constabulary Act, 1992*. The Chief Adjudicator receives References from the Commissioner for hearing, or assignment to another adjudicator.

Canadian Association for Civilian Oversight of Law Enforcement

In September 2002 this office hosted the national CACOLE (Canadian Association for Civilian Oversight of Law Enforcement) conference. More than a hundred delegates and speakers from across Canada and beyond participated. The feedback from participants adjudged the event an unqualified success! We take immeasurable pride in this success and wish to thank our Program Coordinator, Lorraine Roche, a longtime CACOLE Board member, for her tireless efforts in organizing an exceptional educational and social program.

Supreme Court Decisions

The Royal Newfoundland Constabulary Public Complaints Commission v. Cst. B. McGrath
220 Nfld. & P.E.I.R. 282

This 1996 complaint concerned the manner in which police pursued a vehicle involved in a high speed chase through St. John's. The complainant's brother was a passenger in the pursued vehicle which left the road at an intersection in the city's east end and caused the young man's death. At the public hearing, several preliminary objections were raised by counsel for one of the police officers. The Adjudicator's decision to allow some of the objections and reject others was appealed to the Trial Division of the Supreme Court of Newfoundland and Labrador. That decision was subsequently appealed by the Commission to the Supreme Court of Newfoundland and Labrador, Court of Appeal. Judgment was rendered on December 23, 2002.

The Court of Appeal reviewed questions concerning interpretation of s.43(2) of the *Royal Newfoundland Constabulary Act, 1992* and s.30(2) of the *Royal Newfoundland Constabulary Public Complaints Regulations*. Both sections use the word “shall” to describe how certain procedural actions should be carried out. The issues were whether the sections are directory or mandatory, and whether the failures to comply with these sections justify denying the complainant a hearing of her complaint. Following review of the issues and the law, the Court held that it makes no logical sense to frustrate a scheme put in place by the legislature to allow a citizen a user-friendly police complaint procedure by holding that every step along the way is mandatory. The Justices observed the primary objective of the Public Complaints’ scheme is not discipline, although discipline may ultimately result. They concluded that the duties imposed by *Part III* of the *Act* and the *Complaints Regulations* are essentially public in nature and not focused on the private rights of individual police officers. Accordingly, the Court ruled the complaint was to proceed to Hearing.

Cst. D. Maloney v. Royal Newfoundland Constabulary Public Complaints Commission
215 Nfld. & P.E.I.R. 181

In October 1997 the complainant alleged some members of the Royal Newfoundland Constabulary discriminated against him by charging him with assault while he was free on bail awaiting a new trial on a murder charge. The complaint alleged the police officer had laid the charge improperly without doing a complete investigation.

Following a public hearing, the adjudicator determined that the charging officer had conducted himself in a manner unbecoming to a police officer by failing to conduct a proper and thorough investigation before laying a charge. The police officer was disciplined. The officer appealed to the Supreme Court of Newfoundland and Labrador, arguing errors on the part of the Adjudicator. Judgement was rendered on August 2, 2002.

The Supreme Court Justice identified the issues for consideration in the adjudicator’s decision dated August 2, 2002 as follows: which standard of review is applicable on an appeal of an adjudicator’s decision, and whether the Adjudicator breached the applicable standard in her assessment of the evidence by considering matters which occurred after the arrest and charge and in her assessment of expert evidence, and in her conclusion that the officer failed to thoroughly and properly investigate the alleged offence prior to arresting and charging the complainant.

The court held that the standard of review applicable to an Adjudicator’s decision is one of correctness on legal issues and one of reasonableness on issues of mixed fact and law. It found the Adjudicator did not err by considering matters which occurred after the arrest and charge and that her decisions respecting the testimony of expert evidence and due inquiry prior to arrest did not breach the applicable standard of review. The police officer’s appeal was dismissed.

ACTIVITIES OF THE COMMISSION

General Enquiries

Commission staff respond to all inquiries concerning public complaints. They routinely receive inquiries which are outside the jurisdiction of the RNC Public Complaints Commission. As public servants, staff do their best to assist all persons who need information or redirection. No statistical data is maintained on these inquiries.

Complaints and Appeals

During the year under review, the Commission received thirty-eight public complaints alleging misconduct in relation to fifty-nine Royal Newfoundland Constabulary officers. (See Appendix A and Appendix B for a summary of complaints.) Additionally, it received four appeals from decisions of the Chief of Police in relation to public complaints registered during the previous year (2001-2002), and six appeals of complaints filed during the year under review, totaling ten investigations carried out by the Commission. Three public hearings took place during this reporting period, two of which arose from complaints filed in previous years. There were three Adjudicators' decisions filed; one resulted in discipline of an officer, the other two concerned preliminary objections raised prior to hearing of the complaints. These adjudicators' decisions, along with previous Commission decisions, can be found on our website at www.gov.nf.ca/mcpcc.

Some adjudicators' decisions are appealed to the Supreme Court of Newfoundland and Labrador. Of the above-referenced decisions, two were appealed. Also during this reporting period the two judgments from the Supreme Court of Newfoundland and Labrador, (one from the Trial Division and one from the Court of Appeal) which were referenced on page 6 of this report, were rendered. These decisions interpret our enabling legislation and thereby provide guidance and direction to the Commission in carrying out its mandate.

FINANCIAL REPORT

For the year under review, the total expenditures are presented in the following table.

ACTIVITY	ORIGINAL BUDGET	AMENDED BUDGET	ACTUAL EXPENSES
Salaries - Permanent	51,400.00	62,600.00	60,533.84
Salaries - Other Employees	900.00	1,000.00	750.00
Transportation & Communications	6,500.00	7,400.00	5,779.17
Supplies	1,500.00	1,500.00	1,418.62
Professional Services	90,000.00	142,700.00	142,663.49
Purchased Services	33,500.00	39,300.00	38,654.06
Property, Furnishings & Equipment	1600.00	1,600.00	1,533.32
TOTAL	185,400.00	256,100.00	251,332.5

Appendix A Public Complaints Registered

Appendix B Summary of Complaints by Type of Alleged Misconduct