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Message from the Commissioner

Most police officers and citizens recognize that there will be complaints, meritorious and otherwise, against police officers. Given human nature and the sheer volume of matters handled by police even the best police departments will receive complaints. The challenge is to deal with these complaints fairly and properly by accurately determining the facts and issues and taking whatever appropriate remedial action is necessary. When a police force conveys to the public that it accepts complaints and is willing to seriously investigate allegations of misconduct against its members, police officers can expect to win citizens' confidence, and we are all safer and happier.

Even if this level of confidence is achieved, many public policy observers and ordinary citizens argue a continuing need for civilian oversight of police conduct, maintaining that not to do so is "*leaving the fox in charge of the henhouse.*" On the other hand, critics of civilian oversight argue that it is inherently flawed not only because additional investigations are redundant, but because civilians lack the understanding and experience to properly review police conduct. Government in its wisdom has weighed the arguments and accepted that there is a need for a trustworthy civilian mechanism for members of the public to seek redress of their grievances against police conduct. Our challenge is to fairly carry out this mandate.

Our police force exists for the benefit of our society and the protection of its citizens. Without checks on the improper use of police powers, citizens lose respect not only for the police, but for other government institutions and judicial 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 particular 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.

Lois Hoegg, Q.C.

The Commission and Its Role

The Royal Newfoundland Constabulary Public Complaints Commission was established by legislation in May 1993 and operates pursuant to Part III of the *Royal Newfoundland Constabulary Act, 1992*. Its purpose is 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. Like the civilian oversight agencies in other Canadian provinces, it is an important accountability mechanism for the exercise of those police powers.

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 Commissioner, 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; and to ensure that they are dealt with in accordance with the provisions of Part III of the *Act* which provides a framework for investigating, hearing, deciding of complaints and handling appeals. 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.

Who Are We?

Commissioner

Lois Hoegg, Q.C.

Program Coordinator

Lorraine Roche

Administrative Support

Gerry Peach

Contractual Investigators

William MacDonald

Robert Cuff

Chief Adjudicator

James Kean, LLB,

Adjudicators:

Paul Althouse

David Andrews, Q.C.

John Barrett

Annette Bennett

Reginald Brown, Q.C.

David Eaton, Q.C.

William Morrow, Q.C.
Joan Myles
Ian Kelly, Q.C.
Linda Rose, Q.C.
Robert Sinclair, Q.C.

To Reach Us

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

RNC Public Complaints
Commission
Suite E160, Bally Rou Place
280 Torbay Road
St. John's, NL
A1A 3W8

Telephone: (709) 729-0950
FAX: (709) 729-1302

Web Page www.gov.nf.ca/rncpcc
e-mail: lorraineroche@mail.gov.nl.ca
gerrypeach@mail.gov.nl.ca

Appointment of Adjudicators

Section 29 of the *Royal Newfoundland Constabulary Act, 1992* provides for the appointment of adjudicators by the Lieutenant-Governor in Council. Three new adjudicators were appointed in June of 2003. They are Annette Bennett, LL.B., Corner Brook, William Morrow, Q.C., Bay Roberts and David Andrews, Q.C., Harbour Grace.

Canadian Association for Civilian Oversight of Law Enforcement

In October 2003 Canadian Association for

Civilian Oversight of Law Enforcement (CACOLE) held its annual conference in Banff, Alberta. More than one hundred delegates and speakers from across Canada and beyond participated. Our Program Coordinator Lorraine Roche attended this conference. Ms. Roche has been active in CACOLE during her employment with the Commission. At this meeting she was elected to the position of Secretary of CACOLE's Board of Directors.

Supreme Court Decisions

Oates vs. The Royal Newfoundland Constabulary Public Complaints Commission

A complaint was brought against the Respondent officer of the Royal Newfoundland Constabulary. The complaint was referred by the Appellant Commission to an adjudicator, notwithstanding that the legislation provided for the Appellant to refer a complaint to a Chief Adjudicator, who would decide whether to hear the complaint or refer it to another adjudicator. At this point in time there had not yet been a Chief Adjudicator appointed by the Lieutenant Governor in Council so the appeal was referred by the Commission directly to an adjudicator. The Respondent Officer applied to the adjudicator to halt the adjudication on the grounds that the Appellant's referral of the complaint to an adjudicator (rather than to a Chief Adjudicator) gave rise to a reasonable apprehension of bias, and because the Commissioner was without authority to make such a referral. The adjudicator rejected these submissions and decided to

hear the complaint. The Respondent then applied to a judge of the Trial Division of the Supreme Court of Newfoundland and Labrador who granted *certiorari* quashing the Commissioner's referral to the adjudicator on the basis that it gave rise to a reasonable apprehension of bias. The appellant appealed the Trial Judge's decision to the Supreme Court of Newfoundland and Labrador Court of Appeal.

A majority of the three-member Bench found that the procedure followed by the Commissioner in appointing an adjudicator from a rotation roster was transparent and without prejudice to the subject police officer despite not being strictly in compliance with Section 28(2) of the *Act*. The Court held that to frustrate the rights of a citizen because of the failure of the Lieutenant Governor in- Council to appoint a chief adjudicator would not only be inconvenient, it would be unjust. Accordingly, the complaint proceeded to hearing.

NOTE: Chief Adjudicator James Kean, LLB was appointed on October 18, 2002. All References now go to Chief Adjudicator Kean as per Section 28(2) of the Royal Newfoundland Constabulary Act.

The Royal Newfoundland Constabulary Public Complaints Commission v. Cst. B. McGrath

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.

is maintained on inquiries which do not result in a complaint to the Commission.

Cst. McGrath sought leave to appeal the decision of the Supreme Court of Newfoundland and Labrador Court of Appeal to the Supreme Court of Canada. In July 2003, leave was denied with costs awarded to the Commission. The decision of the Newfoundland and Labrador Court of Appeal stands. The complaint against Cst. McGrath proceeded to be heard on its merits before a new adjudicator.

Complaints and Appeals

During the reporting year, the Commission received thirty-six public complaints alleging misconduct against RNC members. (See Appendices A and B for a summary of complaints.) Additionally, there were four appeals to the Commission from decisions of the Chief of Police in relation to public complaints registered during the 2002-2003 year. Six public hearings took place during this reporting period, most of which emanated from complaints filed in previous years. Commission Adjudicators filed two Interim Determinations and two Final Determinations on four different complaints between April 1, 2003 and March 31, 2004. These adjudicators' decisions, along with previous Commission decisions, can be found on our website www.gov.nf.ca/rncpcc.

General Enquiries

Commission staff respond to all inquiries concerning public complaints. As public servants, staff do their best to assist all persons who need information or redirection regarding their concerns. No statistical data

FINANCIAL REPORT

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

ACTIVITY	BUDGET AMOUNT	ACUTAL AMOUN	FUNDS AVAILABLE
Salaries - Permanent	63,300.00	63,215.72	84.28
Salaries - Other Employees	500.00	450.00	50.00
Transportation & Communications	8,700.00	8,611.59	88.41
Supplies	1,400.00	1,332.96	67.04
Professional Services	172,200.00	171,869.49	330.51
Purchased Services	45,000.00	43,687.41	1,398.34
Property, Furnishings & Equipment	400.00	316.25	83.75
TOTAL	291,500.00	289,483.42	2,102.33

Appendix A Public Complaints Registered

Appendix B Summary of Complaints by Type of Alleged Misconduct

