

RNC PUBLIC COMPLAINTS COMMISSION ANNUAL REPORT

April 1, 2001 - March 31, 2002

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Message from the Commissioner

One of the principal reasons for the creation of a Public Complaints Commission in the Province of Newfoundland and Labrador was the fact that civil proceedings involving police accountability had tended to be slow, tedious, cumbersome and costly for the parties concerned and for the public at large. In consequence, the Royal Newfoundland Constabulary Act, 1992, at Part III, set out a mechanism for improved public access to a forum for the investigation of complaints and a determination of issues through less formal processes than those hitherto obtaining.

In as much as the possible end result of such procedures, less formal though they might be, could be the imposition of discipline upon a police officer, the Act and Regulations thereunder had, of necessity, to contain a significant procedural component. However, neither Act nor Regulations give to an adjudicator clear guidance in respect of the balance to be maintained between the procedural requirements to be met, on the one hand, and the overarching necessity for public access to a forum for investigation and determination issues arising from complaints against police officers, on the other.

The consequence of this deficiency in the Act and Regulations has been, in my experience to date, a large number of preliminary objections made before adjudicators, alleging failure to comply with procedural requirements. These in turn have had the effect of making the new

process as cumbersome and as tedious as the former one and have thereby subverted one of the chief purposes of the Act. As an example, we may cite a particular case in which the initial public complaint was filed in May of 1996 and in respect of which, to the end of this reporting period, no evidence has yet been called on the substantive issue.

To the public it must appear that this degree of focus on procedural issues is inappropriate and frustrating, to say nothing of its being unnecessarily costly. And, indeed, it is not merely a matter of appearance. For in many other jurisdictions where the same problem had arisen, the matter has been remedied by legislation ensuring that the substantive content of complaints is not lost in the procedural guerilla warfare over rights and obligations. Such legislation has given to adjudicators curative powers respecting failures to comply with procedural requirements.

A straightforward example of this is to be found in the Royal Canadian Mounted Police Act, Section 45.11(1) which provides:

“Where, at any time during a hearing, it appears to the adjudication board that there is a technical defect in the notice of the hearing under Subsection 43(4) that does not affect the substance of the notice, the board, if it is of the opinion that the member whose conduct is the subject of the hearing will not be prejudiced in the conduct of the defense by an amendment, shall make such order for the amendment of the notice as it considers necessary to meet the circumstances of the case.” (Emphasis added)

Our current legislation by way of contrast gives only limited power to an adjudicator to amend a reference but only at the commencement of a hearing. I believe that our procedures could be greatly streamlined, to the general advantage of all parties, if the legislation were amended to provide in a general way that technical errors as to form, failure to file or to give notice on time, and other procedural errors of a minor nature, do not go to the jurisdiction of an adjudicator unless the error, in the opinion of the adjudicator, prejudices a fair determination of the issues.

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

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 the internal RNC investigating of such complaints and their disposition; to hear appeals against the decision of the Chief of Police subsequent to such internal investigations; to conduct an independent investigation of the circumstances giving rise to complaints in respect of which appeals have been lodged; to effect a mutually agreed settlement among the parties; to refer the matter to an adjudicator for a public hearing when an agreed settlement is unattainable; and to assume responsibility for carriage of cases before adjudicators. Additionally, the Commission may make recommendations to appropriate authorities respecting matters of public interest related to police services.

The Royal Newfoundland Constabulary is a provincial force having jurisdiction in the areas of St. John's and Mount Pearl and in other towns and communities of the northeast Avalon region, in the city of Corner Brook, and, through its Labrador West Division, the towns of Labrador City, Wabush and Churchill Falls. The remainder of the province is policed by the RCMP.

The Commission maintains a strict policy of objectivity. When evaluating a complaint, it does not act as an advocate either for the complainant or for the member or members of the RNC involved. Its role is to conduct an independent inquiry and reach objective conclusions based on the available evidence.

Commission Staff

Commissioner: Dr. Leslie Harris
Coordinator: Ms. Lorraine Roche
Secretary: Ms. Gerry Peach

Legal Counsel: Mr. Norman Whalen, QC,
Mr. John Baker
Mr. Peter O'Flaherty

Adjudicators: Mr. Paul Althouse
 Mr. Reginald Browne, QC
 Mr. David Eaton
 Ms. Lois Hoegg
 Mr. Ian Kelly, QC
 Mr. Joan Myles
 Mr. Robert Sinclair, QC

Investigators during this period (engaged on contract on a case-by-case basis):

 Mr. Bill MacDonald
 Mr. Robert Cuff

The Complaints Process

What is a complaint?

A complaint is an allegation of police misconduct that affects a citizen.

Where can a complaint be made?

A member of the public can submit a complaint of misconduct to either of the following:
- the office of the Public Complaints Commission at Bally Rou Place, 280 Torbay Road, St. John's, or
- at any detachment of the RNC in St. John's, Corner Brook or Labrador West.

The complaint must be made in writing. Specific forms are provided directly to those seeking them. Upon completion of the complaint form, the complainant is given a form that sets out the procedures to be followed in dealing with a complaint and describes the rights of the complainant.

Is there a time limit on complaints?

If a complaint is to be acted upon, it must be registered within three (3) months from the date of the alleged misconduct. Notwithstanding, the three-month time limit will not begin to run against a complainant until he or she knows, or considering all circumstances of the matter, ought to

know that he or she has a right of complaint concerning the conduct of a police officer. The burden of proving a postponement of the running time is upon the complainant.

Once a complaint has been made:

Upon receipt of a public complaint, the Royal Newfoundland Constabulary Internal Review will conduct an investigation. Following the investigation, the Chief will provide the complainant with a report outlining the results of the investigation, his findings and disposition.

What if there is dissatisfaction with the decision of the Chief of Police?

Either the police officer or the complainant may lodge with the Commissioner an Appeal against the decision of the Chief of Police. The Commissioner will undertake a full investigation of the matter.

The Commissioner may:

- settle the matter by agreement of all parties;
- dismiss the appeal; or
- refer the matter to an adjudicator who will conduct a public hearing into the matter.

General Enquiries

Commission staff responds to inquiries concerning the public complaints process. Staff members also routinely receive enquiries which are outside the jurisdiction of the RNC Public Complaints Commission. As public servants, staff assists all persons who seek assistance or information by redirecting callers to the appropriate department or organization.

Activities of the Commission

Web Site

One of our great achievements of this year has been the development of a website. At the end of this fiscal reporting period the site has not yet gone live, however in the near future it will be available on-line at www.gov.nf.ca/rncpcc. We must recognize the contributions of Ms. Susanna Duke, Director of Legal Information Management, Department of Justice, without whose assistance this achievement would not be possible.

Complaints and Appeals

During the year under review, April 1, 2001 to March 31, 2002, thirty-five public complaints were filed. Appendix A outlines the complaints registered and the disposition of those complaints at the end of this reporting period. Appendix B provides a summary of the complaints by type of alleged misconduct. There were eight investigations undertaken during this period by investigators of the Commission. Several examples of these investigations are highlighted below. Also during this period under review, there were a number of public hearings some of which arose from complaints filed in prior years. Decisions on adjudications are available on our website.

Report on Investigations Following Appeals

A man who had ben detained under the Mental Health Act following an argument with neighbours complained that he had been detained without cause and roughly handled by two police officers. Further, he complained of ethnic slurs while he was being processed at the lockup. Following an internal investigation the complaint was dismissed by the Chief of Police. This decision was appealed to the Commissioner.

The Commissioner ordered an investigation and upon its conclusion determined that the officers in question had acted in good faith in the exercise of their duties as they properly understood them. Concerning the alleged ethnic slurs, during the course of the investigation the complainant suggested that the comments in question most likely came from corrections staff and not the named officers. The Commissioner upheld the decision of the Chief, denied the appeal, and dismissed the complaint.

A man reported to the police that he had been assaulted in the course of an argument with his pharmacist. An officer investigated the alleged assault and determined that no charges would be laid. The man filed a complaint with the RNC, alleging that the member's investigation was incomplete and biased by the member's knowledge of the man's medical history. Further, it was

alleged that the officer was unprofessional in his dealings with the complainant. An internal investigation found the allegations to be unfounded and the complaint was dismissed by the Chief of Police. This decision was appealed to the Commissioner. Upon the investigation's conclusion, it was determined that there were sufficient unresolved issues to warrant reference to an adjudicator. At the time of reporting this hearing was pending.

The police responded to a complaint from a tow truck operator that, while he was attempting to repossess a vehicle for a car dealer, the man in possession of the vehicle had broken his cell phone. Three officers attended the call, during which the parties agreed on payment for the cell phone, with no charges being laid. The vehicle owner subsequently made a statement to the police and requested that the tow truck operators and/or the car dealer be charged with attempted theft. One of the three members was assigned to investigate, and determined that charges would not be laid.

The man subsequently lodged a complaint, alleging that the members refused to take his complaint of attempted theft at the scene, that one of the members had intimidated him into paying for the cell phone, and that the follow-up investigation had not been properly conducted. The complaints were dismissed by the Chief of Police, following an Internal Review investigation. The complainant appealed the Chief's decision to the Public Complaints Commission, however, at the time of this reporting, the Commission had not completed its review.

A man complained that, without cause, two RNC members had attended an apartment where he was staying, and had further threatened him with physical violence. An internal investigation found the allegations to be unfounded and the complaint was dismissed by the Chief of Police. This decision was appealed to the Commissioner.

The Commissioner ordered an investigation. Upon the investigation's conclusion it was determined that the members had a duty to attend the apartment, as a call had been received from that address stating that the complainant was suicidal. The alleged threats were determined to be unfounded. The Commissioner upheld the decision of the Chief and dismissed the complaint.

Civilian Oversight of Police Organizations in Canada

Most provinces in Canada have some form of civilian oversight of law enforcement. Although agency size, statutory authority and responsibilities vary from province to province, civilian oversight agencies share a common goal: a positive relationship between the public and the police.

This is achieved through an accessible and transparent complaint process, conscientiously monitored by independent and impartial civilian agencies. Commissions and provincial agencies responsible for civilian oversight of investigations into alleged police misconduct are mandated to ensure that complaint investigations are thorough, fair and balanced to both the complainant and the respondent.

Society has a fundamental interest in ensuring that the exercise of police powers is both legitimate and without excess.

Agencies responsible for civilian oversight across Canada include:

- Office of the Police Complaints Commissioner, British Columbia
- Alberta Law Enforcement Review Board
- Saskatchewan Police Complaints Investigator
- Law Enforcement Review Agency (LERA), Manitoba
- Ontario Civilian Commission on Police Services
- Le Commissaire `a la deontologie policiere
- New Brunswick Police Commission
- Nova Scotia Police Commission
- Royal Newfoundland Constabulary Public Complaint Commission

CACOLE Annual Conference

The annual conference for the Civilian Oversight of Law Enforcement (CACOLE) was held in Quebec City in June 2001. Ms. Lorraine Roche is one of the Board of Directors of CACOLE and represented the RNC Public Complaints Commission at this conference. Ms. Gerry Peach also attended in order to learn more about CACOLE and its role. This office will host the next year's CACOLE Conference in September of 2002.

CACOLE Legislative Training Sessions on Bills C-24, C-35 and C-36

On March 7-8, 2002, Lorraine Roche, Program Coordinator and legal counsel Peter O'Flaherty attended the CACOLE Legislative training sessions on Bills C-24, C-35 and C-36 in Ottawa, Ontario. The training session was organized and conducted by the Criminal Law Policy and community Justice Branch of the Department of Justice Canada and involved a series of briefings by senior counsel, followed by panel discussions and presentations on important changes to the law in Canada. The topics presented on included the law enforcement justification (New Sections 25.1 - 25.4 of the *Criminal Code of Canada*), the need for a proactive role for civilian oversight agencies, police control over demonstrations, and the recent changes to police powers in the areas of organized crime, antiterrorism, and visits of heads of state.

The enactment of Bill C-24, and specifically the provisions concerning the law enforcement justification, places the Public Complaints Commission on the front lines of overseeing the conduct of law enforcement officers protected from criminal liability for committing otherwise illegal acts. At this stage, it is difficult to predict how this change in the law will impact the operations of the Public Complaints Commission, however, it was made abundantly clear at the legislative training session that Parliament contemplated an important role for civilian oversight bodies in this regulatory scheme.

Financial Statements

The following table provides information on the financial activities of the Public Complaints Commission during the year under review.

Activity	Actual Amount
Salaries	57,254.93
Employee Benefits	500.00
Transportation & Communications	7,250.80
Supplies	1,539.88
Professional Services	130,253.49
Purchased Services	33,427.76
Property, Furnishing and Equipment	164.95
TOTAL	230,391.81