Royal Canadian Mounted Police External Review Committee

Disciplinary Dismissal -

A Police Perspective

DISCUSSION PAPER 6

Disciplinary Dismissal -
A Police Perspective

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Royal Canadian Mounted Police
External Review Committee

The Committee publishes a series of discussion papers to elicit public comment to assist the Committee in the formulation of recommendations pursuant to the Royal Canadian Mounted Police Act (1986). The views expressed in this paper are not necessarily the views of the Committee.

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Royal Canadian Mounted Police
External Review Committee

Discussion Paper Series

Number 6: Disciplinary Dismissal

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FOREWORD

This discussion paper is the sixth in a series produced by the Research Directorate of the RCMP External Review Committee for discussion purposes. It could not have been written without the cooperation and assistance of many people in the police community across the country. The Committee would like to extend its sincere appreciation to all who have helped in its preparation.

Given space limitations, it was not possible to summarize the provisions of the Police Acts of each province of Canada. References to all provincial and federal legislation are believed to be accurate as of 1 December 1990. The terms "dismissal" and "discharge" are used in legislation, regulations and collective agreements to refer to termination of employment for both disciplinary and medical reasons; both terms are used throughout the text to refer to termination for disciplinary reasons.

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Chapter 1

INTRODUCTION

Discharging employees for failing to adhere to the standards of conduct set by an organisation is often difficult and never pleasant. The severe consequences to the discharged employee and the disruption that it causes within the organisation are good reasons to use this step only as a last resort, when the disciplinary process has been exhausted. This view also holds true for disciplinary dismissals within public-sector law enforcement agencies such as, for example, the municipal police forces or the Royal Canadian Mounted Police (RCMP).

The procedure for dismissing employees in the public-sector law enforcement sphere is, perhaps, the most complicated that can be found in any profession in Canada. Each province has the authority to regulate its own police forces through an administrative, legal framework, and the federal government has its own police force -- the RCMP -- which is regulated through federal legislation. In addition, where the RCMP has entered into a contract for service with a province or a municipality, it may be regulated partially through provincial legislation. This complete constitutionally-related, jurisdictional question has not yet been conclusively answered by the courts.

The purpose of this discussion paper is to provide an overview of the process of disciplinary dismissals as a comportment of human resource management, particularly in the area of police administration. A detailed study of the various characteristics and practices of law enforcement agencies across Canada will be undertaken, with an emphasis on the legal framework for dealing with police misconduct through the disciplinary process. In order to provide a comparative perspective, general management theory, as well as the experiences of two private sector enterprises, will be discussed briefly. In addition, an overview of pertinent labour law issues will be provided. Finally, in order to stimulate discussion, various models and options for policy development will be presented. In keeping with the format, no conclusions will be drawn, nor will the paper adopt a particular viewpoint on the issue of disciplinary discharges.

Despite the tentative nature of the paper, a distinct theme will be that while there is little that management can do to prevent employees from breaching codes of conduct, regulatory legislation, or the *Criminal Code*,[1] there is much that it can do to ensure that employees are well managed and well motivated. Policy development for future disciplinary procedures must be undertaken with a solid grasp of all the variables present in the employment environment, taking into account the special nature of law enforcement as a profession and as a public service.

Chapter II

MANAGEMENT THEORY

The achievement of effective organizational performance is the essence of the managerial process, and employee discipline plays an integral role in reaching that goal. The role of discipline is to establish work and behaviour rules and to enforce these rules by imposing sanctions on those who break them. The ultimate sanction in the work environment is, of course, dismissal. Dismissal of an employee, however, also represents the failure of the disciplinary process. In order for the disciplinary process to be effective, it must bring about a positive change in the behaviour of an employee who has broken the rules of conduct. To provide employees with the tools to bring this change about, management theorists have developed a series of discipline models. These models represent steps in an evolutionary process and they have become more sophisticated as our understanding of human behaviour has increased.

Initially, disciplinary methods were founded on the belief that employees were best controlled through harsh, punitive methods that ignored the employee perspective. The employee was hired "at the pleasure" of the employer, and could be dismissed "at will".

Growing labour unrest beginning at the turn of the century, and the massive economic dislocation caused by the Depression of the 1930s, led to changes in the relationship between the employer and the employed. The rise of trade unions, gradual legislative reform in response to a growing middle class, and changing judicial attitudes, ail contributed to the development of new managerial theories with a stronger emphasis on the individual employee as a valuable resource.

In addition, the profit motive encouraged employees to change their perceptions of workers as dispensable: the desire for increased productivity and profitability played an important part in promoting the idea that workers were valuable as individuals, and should be treated in ways that encouraged greater productivity through positive reinforcement. The development of new theories of human resources and fiscal management made it clear that a company could not afford to discharge workers at will; the cost and effort required to replace the fired worker hampered efficiency and resulted in decreased competitiveness. It has been observed that "[h]ow well an organisation obtains, maintains, and retains its human resources determines its success or failure."[2]

These developments in managerial and organizational theory also affected the administration of policing agencies, although for reasons other than the profit motive. Like other public service organisations, police forces have an interest in being efficient and responsive to the needs of their constituents. Thus, as new theories and techniques were developed in private business and industry, they would eventually find their way into the thinking of police managers and organizational theorists. Unfortunately, there continues to be a time lag between the implementation of new ideas in the private sphere, and their adoption by police organisations. This time lag is caused mainly by the conservative nature of management approaches in police administration, but also by the difficulty in adapting what are essentially private-sector, profit-motivated concepts to the special factors that affect the status of the police officer in the context of police administration. These special factors will be addressed in detail below.

The concept of positive discipline forms the basis for contemporary management theory. It has been described as:

> [I]nvolving building and teaching; it is not a negative concept with the connotations of punishment and revenge. Good discipline encourages self-control. Discipline actually can be regarded as a morale builder instead of a threat to morale. Truly, discipline is a way of thinking. It requires sound leadership, the creation of a healthy climate, and expert teaching.[3]

In contrast to negative discipline, which focuses on punishment and deterrence, positive discipline is aimed at educating the employee. The object is to persuade the worker that the rules and regulations which govern employee behaviour are for the benefit of all, and that the employee has responsibilities as well as rights; breaching the rules of conduct is tantamount to a failure to accept the responsibilities that go along with the rights. Thus, it may be said that:

> [D]iscipline is the training and development of a cooperative work force striving together for the realization of management goals and objectives. Disciplinary action has the purpose of teaching and molding. Planning and implementation of such action should never lose sight of that purpose. Punishment has no place in thinking about discipliner.[4]

Currently, "progressive discipline" is generally accepted as the most effective approach to dealing with human resource management problems. Essentially, progressive discipline involves a series of escalating repercussions in response to repeated employment-related violations by a worker. Following the initial violation, the superviser will give the worker an oral warning (counselling). A second violation leads to a written reprimand. A third violation generally results in a disciplinary suspension (without pay), and further violations are considered cause for dismissal. In this manner, the employee is given several opportunities to improve conduct, and ample warning that repeated violations will result in termination. Arbitrators have expressed a preference for this approach because, as a punishment theory, it is perceived as being fairest for the employee.

Despite its widespread use, the concept of progressive discipline is by no means universally applauded. It has been pointed out that, "[i]n spite of the fact that the system follows the pattern recommended by arbitrators and most human resources textbooks and produces a great deal of disciplining, little discipline actually exists in the work place."[5] It is argued that several aspects of the traditional notion of progressive discipline prevent it from being an effective remedy for the ills that afflict the North American work place. One problem is that its object is "too limited or just plain wrong. The ... goal is to force employees to comply with the rules and policies of the employer."[6] It is asserted that this object should be taken further, to "develop[] employees who have a sense of their own responsibilities and try to fulfil them, with rule compliance as a by-product only."[7] This problem is compounded by other factors, such as: focusing on past behaviour; focusing on a problem employee instead of an employee with a problem; emphasizing punishment over problem solving; treating the employee like a child; creating an adversarial situation; and failing actively to assist the employee in improving performance.

The solution, according to James Redeker, is to transform the process into one where the employee is given positive reinforcement through rewards, support, an opportunity to participate in solving a problem, and being treated with respect and tact. Failure to improve still results, ultimately, in termination, but the process ensures that the employees recognize their share of the responsibility for that result.

The central theme of "non-punitive" progressive discipline is the emphasis of the positive wherever possible, by encouraging workers to see themselves as responsible individuals taking part in a concerted effort to achieve a shared objective.

Redeker makes it clear that "non-punitive" progressive discipline requires more skill and effort on the part of supervisors, but he asserts that "if the employer wants employees who are as productive as possible and wants to maximize the return on the training investment, non-punitive discipline in the hands of trained supervisors is the way to go."[8]

It is recognized that police administration differs in many ways from private-sector, profit-oriented organisations, but the points raised by Redeker are worthy of consideration. Arguably, ail personnel supervisors, whether in the public or private sector, are interested in improving the productivity of their workforce while maintaining good morale among personnel; Redeker's arguments provide a foundation for achieving these goals. It remains to be seen whether police administration, with its special legal and organizational characteristics, is amenable to this type of approach.

Chapter III

LEGAL ISSUES

Policing is in many ways a unique profession. The legal status of the police constable in society has various consequences, not only in terms of responsibility towards the public, but also in the area of
labour relations, and more particularly, labour law. This part of the discussion paper will canvas some of these issues and their consequences.

A. The Status of the Police Constable in Society

At common law, the police constable has several responsibilities. The constable is:

(i) an officer of the court;

(ii) accountable to the judiciary;

(iii) a member of a constabulary;

(iv) sworn to prevent crime;

(v) an agent of the community.[9]

This list indicates that the constable plays a variety of roles in society, law enforcement being merely one of them. It is important to understand the relationships that exist among the constable, the public, and the state. In Canada, this issue is complicated by the existence of two separate policing traditions: the federal Royal Canadian Mounted Police, a paramilitary, state-controlled organisation reputedly modelled on the Royal Irish Constabulary; and the municipal police constable, modelled on the original London Metropolitan Police created by Sir Robert Peel in 1829, who essentially plays the role of peace officer, or one who preserves the peace.

The municipal constable is a common-law police officer, whose employment relationship with the Chief Constable or Municipal Board is described in the following passage in *A.G. for New South Wales v. Perpetual Trustee Co. Ltd*:

> There is a fundamental difference between the domestic relation of servant and master and that of the holder of public office and the State which he is said to serve. The constable faits within the latter category. His authority is original, not delegated, and is exercised at his own discretion by virtue of his office: he is a ministerial officer exercising statutory rights independently of contract. The essential difference is recognized in the fact that his relationship to the Government is not in ordinary parlance described as that of servant and master.[10]

This also applies to the relationship between a member of the RCMP and the Commissioner of the RCMP. This distinction between the master-servant, contractual relationship found in the private sector, and the constable as a holder of office, largely makes normal dismissal processes under labour law inapplicable to the disciplinary process found in the policing context. This is so because labour law principles are founded on the contractual principles of master and servant. We shall see, however, that the contemporary version of the employment relationship within public sector law enforcement agencies has taken on some of the characteristics of the conventional master-servant relationship through collective bargaining.

Like other public service sectors, police agency members did not have the right to bargain collectively until quite recently. As Richard Jackson writes:

> While it can be argued that police associations are not by any means new in Canada, it is accurate to observe that it is only in recent years that these associations have adopted a trade union mode--in terms of strategies, tactics, and other behaviours--in their dealings with management.[11]

While it should be noted that not all Canadian jurisdictions allow for collective bargaining by police, today it is generally accurate to say that the existence of police associations has transformed the relationship between management and constables to a situation that more closely resembles that of the modern union-management relationship, than the traditional authoritarian, hierarchical structure which characterized policing for much of the century. Nowhere is this more clear than in the judgment of Chief Justice Laskin in *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*,[12] where he stated:

> I would observe here that the old common law rule, deriving much of its force from Crown law, that a person engaged as an office holder at pleasure may be put out without reason or prior notice ought itself to be re-examined. It has an anachronistic flavour in light of collective agreements, which are pervasive in both public and private employment, and which offer broad protection against arbitrary dismissal in the case of employees who cannot claim the status of office holders.[13]

Nicholson is a watershed case because it established the parameters for the relationship between the constable and management. As Laskin C.J. points out:

> I wish to emphasize here that the frame of the [Police] Act and regulations thereunder has left the words "at pleasure" behind as relics of Crown law which no longer governs the relations of police and Boards or Municipal Councils.[14]

Although the result of *Nicholson* has been the development of procedural safeguards for police constables, not only in the area of dismissals, but in disciplinary action as well, it should not be forgotten that the constable is still the holder of an office, with powers deriving from legislation, brought into effect by the swearing of an oath. Thus, the constable may be seen as occupying a position somewhere between the traditional view of the constable as a person holding an office "at

pleasure", and the modern view of a private sector employee, protected by a collective agreement as well as employment and labour legislation.

This is highlighted by the elaborate and far-reaching disciplinary codes that characterize the policing environment. The boundaries that police constables are required to observe in discharging their duties can easily be overstepped through excessive zeal, as may be seen in *R.v. Wigglesworth*.[15] Such excesses can lead, not only to internal disciplinary action based on a perceived violation of a code of conduct, but also to criminal charges being brought against the constable. This level of accountability is rarely found in other employment environments.

At times, this degree of accountability leads to constables claiming that the parallel internal disciplinal and external criminal charges put them in double jeopardy. In *Wigglesworth*, the accused was an RCMP constable who had assaulted a man being detained on a charge of impaired driving. The RCMP charged the constable with a major service offence. In addition, he was charged with a criminal offence. He claimed double jeopardy. At the Supreme Court of Canada, the issue turned on subsection 11(h) of the *Canadian Charter of Rights and Freedoms*.[16] It states that:

> Any person charged with an offence has the right:
>
> (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again;...

In rejecting the double jeopardy argument, the Honourable Madame Justice Wilson stated that:

> In my view, if a particular matter is of a public nature, intended to promote public order and welfare within a public sphere of activity, then that matter is the kind of matter which fails within s.11. It falls within the section because of the kind of matter it is. This is to be distinguished from private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity.[17]
>
> ...
>
> I would hold that the appellant in this case is not being tried and punished for the same offence. The "offences" are quite different. One is an internal disciplinary matter. The accused has been found guilty of a major service offence and has, therefore, accounted to his profession. The other offence is the criminal offence of assault. The accused must now account to society at large for his conduct.[18]

In summary, it may be said that the status of police constables has changed drastically since the turn of the century. Although the source of their powers has not altered, they have succeeded in

gaining some influence over issues such as discipline and discharge, partially through a judicial recognition of the police constable as a public servant with rights similar to those of other employees. Labour and employment standards have come to govern much of the relationship between the constable and management, providing a measure of predictability in the area of employment concerns.

Discipline remains an area that is governed almost entirely by legislation. Extensive service codes of conduct ensure that police agencies are among the most heavily regulated in the public sector, in recognition of the power that they wield over the population.

It should also be noted that Canada's different jurisdictions may differ widely in their regulation of policing. This makes it difficult to make general statements which apply to more than a few provinces, and perhaps the RCMP. The RCMP itself is different in that its employees are prohibited from bargaining collectively. Part IV of this paper will address the disciplinary procedures of the RCMP and the provinces in more detail.

B. Employment and Labour Law Issues

At one time, employees could hire and fire workers at will: employees had no recourse if the employer decided, even on a whim, that the employee should be discharged. This state of affairs began to change in the 19th century as labour laws developed in response to the atrocious working conditions found in many urban settings. The establishment countered attempts to organize workers by prosecuting the organizers under the common law crime of conspiracy, but this proved ineffective against the growing forces mustered by blue-collar workers joining together to enforce their demands for better working conditions.

While the legal structure of the working environment has changed drastically in the last century, the legal foundation, which is contractual in nature, has remained the same. Today there exists an extensive legal framework in the form of employment standards laws, which protect non-unionized workers from arbitrary treatment by employees. This framework has three sources of rights and obligations: legislation; express contractual obligations; and implied contractual obligations. Unionized workers are also subject to the collective agreement between their union and the employer, which, where legislation allows it, may supersede statutory provisions.

The legal framework provides for certain obligations owed by the employer to employees. These obligations include matters such as minimum wages, a safe and healthy work environment, regular payment of wages, and reasonable notice of termination, unless it is "for cause".

While employees have secured many rights through legislative and common law developments, there are also duties and obligations owed to the employer that the employee must meet as part of the contractual relationship. These duties include obeying lawful orders, being competent, being loyal, respecting the rules of the workplace and completing the work assigned. Failure to meet these obligations is likely, ultimately, to result in a disciplinary discharge.

Generally speaking, most current legislative frameworks provide that an employer may dismiss an employee without cause. However, the employee must be given "reasonable notice" prior to the dismissal taking effect. A variety of factors will affect the definition of "reasonable notice", including the type of occupation, the length of employment, the position held, the availability of alternative employment, and the age of the employee. Ail of this may be varied under a collective agreement.

In order for an employer to have the right to terminable an employee using the procedure of a disciplinary discharge, the employer must have a cause. The key issue is determining what constitutes sufficient cause. For example, could an employer fire a worker for being late once? What if the worker is late each Monday of every week? Another question which arises is: Can the worker be fired for activates undertaken away from the workplace? Under what circumstances? Labour arbitrators and the courts have provided answers to some of these questions. For example, in *Re Millhaven Fibres Ltd, Millhaven Works, and Oil, Chemical and Atomic Energy Workers Int'l, Local 9-670*[19] it was held that in order for a company to justify a disciplinary discharge based on conduct outside the workplace, it must show that:

(1) the conduct of the grievor harms the Company's reputation or product;

(2) the grievor's behaviour renders the employee unable to perform his duties satisfactorily-,

(3) the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him;

(4) the grievor has been guilty of a serious breach of the Criminal Code and this rendering his conduct injurious to the general reputation of the Company and its employees;

(5) places difficulty in the way of the Company properly carrying out its function of efficiently managing its Works and efficiently directing its working forces.[20]

It is not yet clear whether the employer is required to meet all of the above criteria, or whether meeting one suffices to justify a disciplinary discharge. In *Re Flewwelling and Adjudication Board Established by the Public Service Staff Relations Board*,[21] the adjudicator at the Board hearing stated that:

> In my opinion the employer need only show that one of the Millhaven consequences has flowed from the employee's conduct in order to warrant discipline... It is interesting to note in the Millhaven rules that the conduct of the employee need not be "criminal" in order to support discharge, but rather the conduct must be such that any of the five enumerated consequences would follow.[22]

Thus, the adjudicator appears to favour the notion that only one of the five need be present in order to justify a discharge. On appeal, the Federal Court of Appeal approved the adjudicator's findings, on the issue of whether *Millhaven* applied, without discussing the details of the test.

The RCMP External Review Committee has also had occasion to review the test set out in *Millhaven*. In case file 2000-90-005, the Chairman, in applying the test, stated that: "The majority of the five Millhaven criteria being met, I find, on the basis of *Flewwelling* that, absent sufficient mitigating factors, discharge is the appropriate sanction.[23] This statement appears to incorporate two additional elements, not originally mentioned in *Millhaven* and *Flewwelling*. The statement may be read as requiring that a majority of the five criteria need to be met in order to justify a discharge, and the reference to mitigating factors appears to indicate that even if all five criteria were met, the presence of mitigating factors may preclude a discharge. The determination of what constitutes a mitigating factor appears to be a question of fact.

The result of these cases is that the meaning of *Millhaven* is not becoming clearer. Instead, they have created a measure of uncertainty about the true criteria necessary in order to support a dismissal for conduct outside the workplace. This uncertainty should be eliminated by the Federal Court as soon as possible.

It is also possible for an employer to dismiss an employee for repeated minor breaches of standards of conduct, provided that the employee was made aware of the disapproval with which his conduct was viewed. This is true even if each breach, when viewed in isolation, would not constitute sufficient "just cause" for a summary dismissal. In order for the employer to dismiss the worker, however, there must be a "culminating incident". Past incidents can only be used to support a discharge precipitated by an immediate violation of standards of conduct.

Summarily dismissing an employee for failing to meet established performance standards is probably the most difficult area for employees. In the past, this was much easier, as it was based on the belief that "the employee, by accepting employment, had held out that he had the skill and competence to do the job.[24] Today, "lack of adequate skill by an employee who is doing his best no longer permits discipline... The right to dismiss without notice... may only be used where there is a finding of wilful misconduct."[25]

There are other areas of general labour or employment law which may be relevant to the public sector policing employment situation. The concept of constructive dismissal has grown in significance in the last two decades. Constructive dismissal occurs when:

> [T]he employer unilaterally changes a fundamental term of the employment contract, such as salary lever, job responsibilities, level of status or prestige, fringe benefits, or hours of work, the employee may treat the contract as having been repudiated by the employer and seek the available legal remedies.[26]

Employers may also attempt to coerce employees into resigning. This coercion may take the form of duress or acts calculated to generate resentment and frustration[27]. This may also be treated

as constructive dismissal, and arbitrators will look for evidence that the resignation was brought about through pressure and executed by the employee while in an emotionally unstable state.

A probationary employee generally leads a precarious existence as compared to regular workers. This is compounded by the fact that many collective agreements today allow the employer to dismiss a probationary employee far more easily than regular workers. In essence, the union reviews management's decision to dismiss a probationary employee more leniently than it would for a regular worker. This double standard is tolerated as long as management provides reasonable evidence justifying why the worker should be dismissed. Some organisations (such as the Metropolitan Toronto Police Force) have joint labour/management committees to review employees' files prior to advising them of the decision to dismiss them.

It should be kept in mind that collective agreements can vary statutory provisions quite drastically. In addition, provincial Labour Codes or Labour Relations Acts may affect the legal framework governing the relationship between employer and employee.

This has been a short and cursory overview of a very complex area of the law. It is intended to provide the reader with a broader context within which to situate the problem of disciplinary discharges within police organisations.

Chapter IV

CHARACTERISTICS AND PRACTICES OF POLICE DISCIPLINARY DISMISSALS

Employees are disciplined and dismissed for a variety of reasons. Some employees are simply unable to fulfil the requirements of their jobs, at least in the eyes of their employer. Other employees engage in activities in the work environment which are incompatible with an ongoing employer-employee relationship; other employees engage in activities outside the work environment which bring the employer-employee relationship into question. Unfortunately, like other professions, the police are not immune to these situations.

Alleged misbehaviour, whether on or off the job, can be brought to management's attention by a number of sources. Sometimes management observes inappropriate activity directly, or becomes aware of it through its results (for example, poor productivity). Sometimes a co-worker will inform management of problems. In other cases a member of the public, or the media, will bring non-work-related activates to management's attention. Again, the police are not insulated from these sources of information.

For the purposes of the following discussion, it is largely irrelevant whether the decision to commence disciplinary proceedings against a police officer is the result of internally or externally obtained information. In some provinces, though, there are legislative or policy differences which come into play depending on whether a complaint is made by a member of the public; these differences will be noted where relevant.

Disciplinary proceedings are usually internal procedures within the policing system of a given jurisdiction. As a general rule, the courts do not get involved with the proceedings and there is frequently no appeal to the courts from the final disciplinary decision. As with ail administrative proceedings, though, the superior courts reserve the right to supervise the process to ensure that the rules of natural justice and fairness are followed throughout the process; this form of supervision is known as "judicial review". As in other areas of administrative law, though, courts are reluctant to substitute their judgment regarding penalties, for example, where there is no suggestion of procedural impropriety.

A. Royal Canadian Mounted Police

1) General

The members of the Royal Canadian Mounted Police (the RCMP or the Force) are subject to the *Royal Canadian Mounted Police Act*,[28] the *RCMP Regulations*,[29] particularly the Code of Conduct,[30] and Commissioner's Standing Orders.[31] It should be noted that one of the key provisions of the amendments to the *RCMP Act* enacted by Parliament in 1986 was the creation of the RCMP Public Complaints Commission (PCC).[32] The PCC was established to investigate complaints from members of the public about the actions of RCMP members and officers; it does not have the power to impose discipline, although it can make recommendations to the Commissioner of the Force, who is required to respond to the recommendations of the PCC.[33] Obviously, circumstances will arise in which disciplinary action will result from a complaint made to the PCC; however, unlike other

jurisdictions, the public complaints and disciplinary processes have been clearly separated in the federal sphere.

2) The Disciplinary Process

The RCMP disciplinary process is set out in Part IV of the *RCMP Act*.[34] When it is believed that a member has contravened the Code of Conduct, an investigation is conducted. Assuming that the results of the investigation confirm the belief, either informal or formal disciplinary action may result.

The type of informal action that may be taken depends on the rank of the person taking it and the member against whom it was taken. The process is purely internal, culminating in an appeal to the Commissioner or a Deputy Commissioner, depending on the rank of the member.[35] Their decisions are final and binding, although they are subject to review by the Federal Court of Appeal pursuant to section 28 of the *Federal Court Act*.[36]

When the Force is of the view that informal disciplinary action is not sufficient, and it wishes to institute formal disciplinary proceedings against one of its members, the member's appropriate officer[37] will cause a notice to be prepared and served on the member. This notice will set out the section of the Code of Conduct which the member is believed to have contravened and the particulars on which the belief is founded. In addition, the notice will generally indicate the penalty being sought.

An Adjudication Board, consisting of three officers of which at least one must "be a graduate of a school of law recognized by the law society of any province" is constituted to hear the allegation(s).[38] The Board has the power to summon witnesses and administer oaths and it may receive evidence that would not be admissible before a court of law.[39] Members have the right to attend Board hearings and they may be represented by counsel or by a member's representative provided by the RCMP Professional Standards Branch.[40] Although proceedings still resemble a criminal trial in many respects, the Board makes its decisions on the balance of probabilities.[41] In addition to the informal disciplinary actions noted above, the Board may impose discipline up to and including discharge.[42] It should be noted that officers of the RCMP are appointed by the Governor in Council (that is, the federal Cabinet);[43] and they can only be dismissed or demoted by an Order in Council; consequently the Adjudication Boards can only recommend that an officer be discharged or demoted.

The decision of an Adjudication Board may be appealed to the Commissioner of the RCMP on matters of fact or law by either the member or the member's appropriate officer, both of whom are parties to the action.[44] Prior to "hearing" the appeal, the Commissioner is required to refer the matter to the RCMP External Review Committee (ERC), unless the member requests that the matter not be referred, in which case the Commissioner has the discretion to accede to the request.[45]

The ERC is established by Part II of the *RCMP Act*. It consists of a full-time Chairman and four part-time members, all appointed by the Governor in Council.[46] Upon receipt of a file, the

Chairman of the ERC reviews the file, which consists of the record of proceedings before the Adjudication Board along with the submissions of the parties on the appeal,[47] and determines whether he is satisfied with the proposed disposition. If the Chairman is satisfied, he advises the Commissioner and the parties; if the Chairman is not satisfied, he may institute a hearing *de novo* or may inquire further into the matter himself and advise the Commissioner and the parties of his findings and recommendations.[48] If the Chairman decides to institute a hearing, he designates the member(s) of the Committee who will hold the hearing; the designated members conduct the hearing and forward their findings and recommendations to the Commissioner and the parties.[49]

Upon receipt of the findings and recommendations of the ERC, the Commissioner reviews the file, which consists of the record before the Adjudication Board, the submissions of the parties, the record before the ERC and any further submissions of the parties. The Commissioner is required to review all this material and render his decision; if he does not follow the recommendations of the ERC, he is required to explain his refusal to follow them.[50] The Commissioner's decision is final, although it may be reviewed by the Federal Court of Appeal pursuant to section 28 of the *Federal Court Act*.[51]

Criminal Offences

Activity which gives rise to a criminal charge can also be the grounds for an allegation of contravention of the Code of Conduct. In addition, the *RCMP Regulations*[52] provide that conviction for a criminal offence is deemed to be disgraceful conduct. Generally speaking, the RCMP believes that there is no reason to delay proceedings under the *RCMP Act* until after the criminal proceedings have been concluded; to do so could give rise to a challenge of the disciplinary proceedings under section 7 of the *Canadian Charter of Rights and Freedoms*. In addition, the *RCMP Act* provides that a hearing must be initiated within one year of the facts and identity of the member(s) involved becoming known.[53]

3) Administrative Discharge

The RCMP Act and the *RCMP Regulations* contemplate a non-disciplinary method of severing or modifying the employment relationship between the Force and its members. The grounds on which this process may be instituted are:

> Any officer may be recommended for discharge or demotion and any other member may be discharged or demoted on the ground, in this Part referred to as the "ground of unsuitability, that the officer or member has repeatedly failed to perform the officer's or member's duties under this Act in a manner fitted to the requirements of the officer's or member's position, notwithstanding that the officer or member has been given reasonable assistance, guidance and supervision in an attempt to improve the performance of those duties.[54]

The procedure under this system is virtually identical to the discipline system, however probationary members do not have the opportunity of appearing before a Discharge and Demotion Board and are limited to making written submissions in defence of their continued employment.[55]

4) Miscellaneous
Probationary Members

Newly-hired members of the RCMP are on probation for a period of two years. During this time, they are subject to the same disciplinary standards as other members. Given, though, that labour rather than criminal law standards are being promoted by the ERC, it could prove easier to dismiss a probationary member on the grounds that the length of employment will not be a mitigating factor when deciding whether dismissal is justified. In addition, a probationary member who is successfully disciplined could be more likely to face administrative discharge procedures (see above).

B. British Columbia

1) General

British Columbia is policed by the RCMP under contract with the province and a number of municipalities, and by twelve municipal police departments. The *Police Act*[56] and the Police *(Discipline) Regulation*[57] govern the behaviour of the municipal police forces and, to the extent that they are not inconsistent with the *RCMP Act*, the RCMP. The *BC Regulation* establishes a Discipline Code consisting of fourteen disciplinary defaults.[58]

2) The Disciplinary Process

No distinction is drawn between major and minor defaults and there are no specific limits on the sanctions available. Penalties range from a reprimand to a "recommendation to the [Municipal Police] board that the member be dismissed from the municipal force."[59] However, provision is made for written reprimands to be entered in a member's official notebook, or on his/her service record, without invoking the formal disciplinary process.[60]

A member of a B.C. police force who is being investigated is served with a Notice of Alleged Disciplinary Default to which he/she may respond.[61] If, based on the results of the investigation, the chief constable of the police force decides to charge the member with a breach of the *BC Police Act* or the *BC Regulation*, he/she is served with a Notice of Formal Discipline Proceedings which outlines the charges and the maximum penalty sought by the disciplinary authority.[62] A hearing is conducted at which the member may be represented by counsel or agent of his/her choice.[63] The presenting officer is required to meet the criminal burden of proof, that is, beyond a reasonable doubt.[64]

The hearing may be chaired by the chief constable, his/her delegate or the chairman of the municipal police board. Where the hearing is chaired by the chief's delegate, the chief "shall, within

7 days of a disposition by the delegate, consider the penalty imposed and may confirm or reduce, but not increase, the punishment."[65] The member may appeal the chief's decision, or the Chairman's, to the municipal police board; the appeal is conducted on the record.[66] The board may confirm or alter the penalty, order a new hearing or dismiss the original charge.[67] The final level of appeal, also on the record, is to the British Columbia Police Commission, which has the same powers as a municipal police board.[68]

Criminal Offences

The *BC Regulation* makes specific provision for circumstances which could give rise to both a criminal charge and disciplinary proceedings.

> 10(3) Where a member has been prosecuted in respect of an offence punishable on indictment or on summary conviction and has been acquitted, no disciplinary proceedings shall be taken under this regulation arising out of the same facts and circumstances.
>
> (4) Subsection (3) does not apply where the disciplinary proceedings relate to separate and distinct issues from those tried in the criminal proceedings.

This would appear to require the police department to await the outcome of criminal proceedings before continuing with the disciplinary process. The *BC Regulation* also requires that an interview with the member for the purposes of the criminal investigation be completed before the member is served with the Notice of Alleged Disciplinary Default (Form 2).[69] Finally, no disciplinary proceedings can be instituted more than six months after the events or three months after they are discovered to have occurred.[70] As a result, where the possibility of duplication exists, disciplinary proceedings are commenced and then suspended, pending the outcome of the criminal ones.

Effect of Labour Law on the Disciplinary Process

British Columbia is unique in that under the *BC Police Act* its general labour relations laws would appear to apply, to a certain extent, to the police:

> 26(3) Subject to a collective agreement as defined in the *Industrial Relations Act*, the chief constable and every constable and employee of a municipal police force shall be
>
> (a) employees of the board,
>
> ...

> 26(4) Part 6 of the *Industrial Relations Act* does not apply to discipline or dismissal of a constable appointed under this Act.[71]

It would appear that when it wishes to discipline a constable, a police force has the option of proceeding under the BC Police Act and the *BC Regulation*, or of proceeding under the *Industrial Relations Act*[72] and a collective agreement negotiated between the police force and its employees. The issue was addressed in *Carpenter v. Vancouver Police Board*.[73]

It was alleged that Constable Carpenter had had stolen property in his possession and, over a considerable period of time, had consorted with criminals. He was subsequently charged with possession-related offences and concurrently dismissed from the police force on the grounds that his involvement in criminal activity had effectively breached his employment contract. He was acquitted at trial and the Vancouver Police Force refused to reinstate him. The Vancouver Police Force had not proceeded by way of the disciplinary process, relying instead on its powers under the collective agreement and the *Labour Code*[74] as it then existed. In ordering Carpenter reinstated, McKenzie J. commented at 412:

> The Legislature has not rationalized the applicability of the overlapping statutes. In the absence of that rationalisation, I must conclude that the *Police Act* and regulations have exclusive application to matters of internal discipline and disciplinary defaults within this police force to the exclusion of the *Labour Code*. When a given situation arises, a decision must be taken as to whether it involves a disciplinary default and, if it does, then the *Police Act* and regulations procedures must be adhered to strictly. The liberty of the subject is not involved, but the policeman is placed in considerable jeopardy and he is entitled to the safeguards placed by the Legislature for his benefit. I am thinking particularly of such benefits as the burden of proof being upon the presenting officer which shall be proof beyond a reasonable doubt. By contrast the standard of proof before an arbitration board would be on a balance of probabilities.
>
> ...
>
> The notice of termination read by the chief constable is not unequivocal but it alleges criminal association and the criminal offence of being in possession of stolen goods. It talks of a "fundamental breach" and "repudiation of the contract of employment as a police officer". I am unable to hold that such a third category of justification for dismissal exists.
>
> ...
>
> Whether or not the misconduct mentioned by the chief constable would constitute a breach or breaches of the discipline code would be for the disciplinary authority to determine. The answer might be that the misconduct did not constitute a breach of the discipline code because the policeman was eventually acquitted.

It would appear that proceeding under the collective agreement is not available to the police force as a means of avoiding the prohibition under the *BC Regulation* from disciplining a police officer based on the same facts for which he/she has been acquitted under the Criminal Code. The Court would not, though, appear to have closed the door on proceedings under the *Industrial Relations Act* (which has replaced the *Labour Code*) in the case of poor performance warranting discharge.

Chief Constables

The *BC Regulation* makes special provision for disciplining a chief or deputy chief constable.[75] Allegations of a disciplinary breach must be forwarded to the chairman of the municipal board, who appoints an investigator. The investigator may be the chief of police from another municipality, a lawyer or an investigator attached to the Ministry of the Attorney General. A report is made to the chairman who decides whether charges are to be laid. Where charges are laid, a hearing is conducted before the municipal board in accordance with the rules applicable to other hearings. Where the case is proven, a chief constable may only be dismissed, required to resign or reprimanded.[76] A deputy chief is subject to all the penalties to which other members are subject.[77] An appeal on the record may be filed with the B.C. Police Commission.[78]

3) Miscellaneous
Non-Feasance Dismissals

There are no specific provisions under the *BC Police Act* or the *BC Regulation* permitting the police force to deal with a member who is not performing at an adequate level. Similarly, there are no provisions dealing with chief constables whose performance is not acceptable to the municipal board. In the case of regular members, the police force must wait and hope that the officer in question will commit a criminal or disciplinary offence. As most chief constables are on fixed-term contracts, usually for five years, it is possible for a municipal board to wait for the expiry of the contract and not renew it.

Probationary Constables

The *BC Police Act* makes no special provisions for probationary constables. Each municipality makes its own arrangements pursuant to the collective agreement with its officers. In Vancouver, a recruit is on probation for 18 months for "the purpose of determining a Probationer Constable's suitability for regular employment."[79] The probationer constable may be dismissed "if it can be satisfactorily shown that he is unsuitable for regular employment."[80]

> 10.4(d) A Probationer Constable's suitability for regular employment shall be decided on the basis of factors such as his,
>
> (i) conduct;
> (ii) quality of work;
> (iii) ability to work harmoniously with others;

(iv) ability to meet the operational and administrative standards set by the employer.[81]

As these provisions operate outside the *BC Police Act*, they are subject to the grievance provisions of the collective agreement. If the employer proceeds against a probationer, he/she would request that the Union review the matter and take it to arbitration, as in any private industry grievance.

4) Public Complaints

Part 9 of the *BC Police Act* makes specific provision for the interplay between the disciplinary process and complaints from members of the public. Complaints may be resolved informally.[82] Although the force may still institute disciplinary proceedings against the member, it may not use admissions made during the informal resolution process as part of the formal proceedings.[83]

Complaints which are not judged to be frivolous or vexations[84] are investigated[85] and the results are provided to the complainant, the constable and the complaint commissioner (a member of the B.C. Police Commission).[86] The constable or the complainant may request an inquiry before the municipal police board.[87] If there is no request for an inquiry, the normal disciplinary process is followed if proceedings are to be taken.[88]

Where an inquiry is held, the municipal board effectively disposes of the matter either by ordering discipline, or by deciding that no discipline is to be imposed.[89] A complainant or municipal constable may seek leave to appeal to the B.C. Police Commission,[90] which, if granted, results in a hearing *de novo*, after which the Commission issues a final order imposing discipline or dismissing the complaint against the constable.[91]

C. Ontario

1) General

At the time of writing, Ontario is in a unique situation. All police forces in Ontario are governed by the *Police Act*[92] and the *Regulations*.[93] In addition, the Metropolitan Toronto Police (Metro Police) are subject to the *Metropolitan Toronto Police Force Complaints Act*.[94] The Ontario government has announced its intention to extend the *Complaints Act* system to other police forces and the Ontario Legislature has passed Bill 107.[95] This discussion will look at the Ontario Provincial Police (OPP) and the Metro Police as they are governed by current legislation. It will also point out the changes which will be implemented when the *Police Services Act* is proclaimed.

2) The Disciplinary Process

Under the *Ontario Police Act*, disciplinary defaults are divided into major and minor offences, the difference being largely one of degree. *The Ontario Regulation* contains an extensive

schedule (Code of Offences) which lists 51 offences. These range from "idl[ing] or gossip[ing] while on duty"[96] to being "guilty of an indictable offence or an offence punishable upon summary conviction under the Criminal Code (Canada)..."[97] In practice, both forces proceed as if all offences were major as the range of sentencing options is greater for "major" offences, and as appeals from "minor" offence proceedings result in de novo hearings whereas appeals of "major" offence proceedings do not.

Both forces normally conduct internal investigations and initiate an internal disciplinary process. The process is similar to that in effect in British Columbia and the member has the right to be represented by counsel or an agent;[98] the force bears the burden of proving the charge on a balance of probabilities.[99] The range of penalties is limited by the qualification of the charge as major or minor: a minor offence can result in a penalty ranging from an admonition to forfeiture of pay,[100] while a major offence can result in a reprimand or dismissal, in lieu of or in addition to any other punishments.[101]

Recommendations regarding the officer's guilt and appropriate penalty are forwarded to the chief of police or the Commissioner, in the case of the OPP. He/she can either quash or confirm the conviction and confirm, mitigate, commute or remit the penalty.[102] If the member of a municipal police force appeals, the municipal police board (in Toronto, the Toronto Board of Police Commissioners) reviews the record, in the case of a major offence, or conducts a hearing *de novo*, in the case of a minor offence; the board has the same powers as the chief of police. The municipal police board is the final level of appeal for minor offences.[103]

A member of the OPP appeals directly to the Ontario Police Commission (the Commission) which does not conduct *de novo* hearings: it makes its determination on the record, although in exceptional cases it will entertain new evidence in the case of minor offences. The Commission hears appeals of major offences from all municipal police forces and from the OPP. The appeal is conducted on the record and new evidence is received only in exceptional circumstances. The Commission's decisions are final and are not subject to appeal, although they are open to judicial review.[104]

Criminal Offences

Traditionally, disciplinary proceedings are held in abeyance pending the disposition of criminal charges for the same incident, although there is no requirement under the *Ontario Police Act* or the *Ontario Regulation* for a stay. Similarly, there is no requirement to discontinue disciplinary measures if there has been an acquittal by the criminal courts. In fact, the *Complaints Act* specifically states that there is no obligation to stay disciplinary proceedings pending the outcome of criminal ones.[105]

Chiefs of Police

Chiefs of municipal police forces may be disciplined for breaches of the Code of Conduct in a manner similar to police officers charged with a major offence. The municipal police board, or

a judge appointed by it, conducts the hearing and imposes a penalty ranging from a reprimand to dismissal. This can be appealed to the Commission.[106] There are no provisions dealing with discipline of the Commissioner of the OPP.

3) Public Complaints

In Toronto, a member of the public may file a complaint about the activities of a Metro Toronto police officer in one of three ways: with the Metro Police; with the Public Complaints Investigation Bureau (the Complaints Bureau); or with the Public Complaints Commissioner (the Complaints Commissioner). The Complaints Bureau and the Complaints Commissioner are established by the *Complaints Act*. The Complaints Bureau is part of the Metro Force, reporting directly to the chief of police. The Complaints Commissioner is an independent person named by the provincial government.

The Complaints Bureau investigates complaints from members of the public; it is required to provide the complainant, the Complaints Commissioner and the chief of police with its findings.[107] The chief may have criminal charges laid, order a board of inquiry, commence disciplinary proceedings, counsel or caution the police officer, or take no action and advise the Commissioner and the complainant of his/her decisions.[108] The Commissioner may launch an investigation into a complaint[109] or may order a board of inquiry to conduct a hearing.[110]

Where disciplinary proceedings are instituted against a police officer as a result of a public complaint, specific provisions providing the complainant with access to the evidence to be presented, and dealing with the admissibility of statements in the informal resolution process, are applicable. In addition, proof of the charge must be beyond a reasonable doubt.[111] Discipline imposed as the result of a public complaint may be appealed to a board of inquiry under the *Complaints Act*, rather than under the provisions of the *Ontario Regulation*.[112]

The board of inquiry conducts a de novo hearing, except in the case of an appeal by a police officer, in which case it conducts an appeal on the record.[113] The board, on appeal or at *de novo* hearing, may impose the same penalties as provided by the *Ontario Regulation* for minor and major offences, upon proof beyond a reasonable doubt of misconduct.[114] An appeal, other than on pure questions of fact, lies to the Divisional Court.[115]

4) Miscellaneous
Non-Feasance Dismissals

The *Ontario Regulation* provides for "dispens[ing] with the services of any member of a police force" and for the discharge or retirement of a member who is unable to fulfil his/her responsibilities because of physical or mental disability.[116] In addition, a member of a municipal force or of the OPP who "does not perform, or is incapable of performing, his/her duties in a manner fitted to, or his/her conduct is such as not to, satisfy the requirements"[117] of the position may also be reduced in rank, or with the concurrence of the Commission, retired or dismissed. As the *Ontario Labour Relations Act*[118] does not apply to the *Ontario Police Act*, there is no provision for dismissal

except by these procedures.

Probationary Constables

The *Ontario Regulation* does not affect "dispens[ing] with the services of any constable within eighteen months of his becoming a constable.[119] In the Metro Force, there is a standing committee on probationary constables. The Committee consists of three members selected by the Chief and three by the police association. If the Force wishes to dismiss probationary constables, they are notified of the intention. If the probationary constables wish to dispute the dismissal, they do so before the standing committee; a majority decision of the committee is final and is not subject to arbitration under the collective agreement. There would appear to be no specific provisions for dealing with probationary constables in the OPP.

5) The Police Services Act, 1990
"Part V: Disciplinary Proceedings"

Part V of the *Police Services Act*[120] will govern police discipline in Ontario. It establishes a list of actions which will constitute misconduct,[121] including contravening "a prescribed code of conduct,"[122] Apparent or alleged misconduct will be investigated;[123] if the allegation comes from a member of the public or if a public complaint is filed subsequently, it will be processed in accordance with Part VI: Public Complaints.[124]

Where the chief of police is of the view that the "police officer is guilty of misconduct but that the misconduct is not of a serious nature", an admonishment will be placed on the police officer's file. The police officer will have the opportunity to comment and will be able to refuse to accept the admonishment, in which case it will not be placed on his/her file without a hearing.[125] In addition, the police force and police associations will be able to negotiate and agree to other minor sanctions which could be imposed without a hearing but with the consent of the police officer in question.[126]

In more serious cases, where a hearing is conducted, the usual rules will apply.[127] If a charge under other provincial or federal laws are laid, the hearing will continue unless the Crown Attorney advises the chief of police to stay the proceedings.[128] Upon misconduct being proven "on clear and convincing evidence", the chief may impose a penalty ranging from forfeiture of not more than 20 days off to dismissal.[129] Dismissal or demotion can only be imposed if the police officer was previously advised that such a penalty would be sought.[130]

A municipal police officer may file an appeal with the municipal police services board. The board will hear the appeal on the record, although it will be able to hear additional evidence. The board will be able to confirm, alter or revoke the previous decision or order the chief of police to conduct a new hearing.[131]

A municipal police officer who is dissatisfied with the decision of the municipal police services board,[132] or a member of the OPP who is dissatisfied with the results of an internal hearing,[133] may appeal to the Ontario Civilian Commission on Police Services. The provisions applicable to municipal boards will apply to the Commission.[134]

Chiefs of police will be dealt with in the same way as other police officers, except that their initial hearing will be before the municipal board unless the chief requests that it be before the Commission.[135]

"Part VI: Public Complaints"

A member of the public will be able to file a complaint with any police force or with the Police Complaints Commissioner. Regardless of where the complaint is made, copies will be provided to the Commissioner, the chief of police, and the public complaints investigation bureau which each force is required to establish pursuant to the *Police Services Act*.[136] The bureau will decide if the complaint relates to misconduct under section 56 or, with the consent of the Commissioner, is more properly classified as an inquiry.[137]

It will be possible to resolve complaints informally and withdraw them,[138] and the chief of police will be able to determine that a complaint is "frivolous or vexatious or was made in bad faith".[139] However, in either case, the chief will still be able to commence or continue discipline proceedings under Part V.[140]

If the complaint proceeds, an investigation will be held[141] and the chief of police will either decide no further action is necessary, admonish the police officer, hold a disciplinary hearing under section 60, call a board of inquiry, or commence criminal proceedings.[142] If the Police Complaints Commissioner disagrees with the chief's disposition, or with the decision of a hearing under section 60, the commissioner may order a hearing before a board of inquiry;[143] in addition, a police officer may appeal his/her discipline as the result of a section 60 hearing to a board of inquiry.[144]

Unless it follows a section 60 hearing, the board of inquiry will conduct a new hearing.[145] "If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may make submissions as to penalty and the board of inquiry may" impose a penalty ranging from forfeiture of not more than 20 days off to dismissal.[146] An appeal on a question other than fact alone will lie to the Divisional Court.[147]

Miscellaneous

It would appear that these provisions are substantially similar to those currently in effect under the *Complaints Act*. It is also interesting to note that a probationary officer will be subject to termination by the municipal board, providing that the probationary officer has been given "reasonable information with respect to the reasons for termination and an opportunity to reply, orally or in writing, as the board may determine."[148] The *Police Services Act* provides that where a police officer resigns, a board of inquiry may not be held into his/her conduct unless the person applies for or commences employment with another police force within 12 months.[149] The Police Services Act makes provision for reducing the size or abolition of a police force[150] and for discharging, after making reasonable accommodation, an officer who is mentally or physically disabled.[151] There are no provisions dealing with poor performance, or providing for special treatment of police chiefs.

D. Quebec

1) General

Like Ontario, *Quebec's Police Act*[152] applies to Its provincial police force, the *Sûreté du Québec* (Quebec Provincial Police Force or QPF) and the various municipal police forces in the province such as, for example, *the Service de protection de la communauté urbaine de Montréal* (the Montréal Urban Community Police or MUC Police). Despite the fact that they are both subject to the same law, there are some significant differences in the way in which each force handles disciplinary matters. In September 1990, new legislation came into effect in Quebec.[153] This legislation creates a new system to deal with citizens' complaints against police officers' misconduct in the performance of their duties. The new system is discussed in detail below. It does not apply to internal disciplinary matters, or to complaints arising out of incidents which occurred prior to September 1, 1990.

2) The Disciplinary Process

The traditional disciplinary process in each force is governed by a separate regulation;[154] complaints about the activities of a member of either force, regardless of where the complaint originates, are investigated by the internal affairs section of the appropriate force. A report is made to the force's *Comité d'examen des plaintes* (Committee for Studying Complaints). In the MUC Police, the *Comité* is composed of seven members, four of whom are senior officers (inspector-rank and above) and three of whom are members of the public (drawn from a pool previously agreed between the union and management).[155] In the QPF, the *Comité* is comprised of five members, two of whom are senior officers and three of whom are members of the public.[156]

The *Comités* limit their review to the material presented by the internal affairs section. They determine either that there are grounds for disciplinary action or that the allegation is groundless. If a *Comité* determines that there are grounds for the allegation it determines whether the resulting hearing will take place before a designated officer of the police force or before a discipline

committee.[157] If the *Comité* determines that there are no grounds for disciplinary action, it

> ... may, in the interest of the public, the Police Force or the accused member, communicate to the member in writing, comments or observations of a nature to improve his professional conscience or to avert the commission of a breach of discipline. They shall be transmitted to the member through his commanding officer or the head of his service, but may not be entered in his personal file.[158]

If the matter proceeds before a designated officer, the range of penalties is limited. In the MUC Police, the designated officer may recommend a warning, a reprimand, a transfer or a suspension without pay.[159] In the OPF, the designated officer may recommend a warning, a reprimand or a suspension without pay.[160] In either case, the designated officer only makes recommendations to the director general of the force who may confirm, alter or disregard the findings. In the MUC Police, the director general may reverse a finding of innocence to one of guilt;[161] this option is not available under the *QPF Regulation*, although the Director General of the QPF may decide not to follow a recommendation.[162]

The discipline committee in the MUC Police consists of three senior MUC Police officers. In the QPF, the committee consists of two senior officers and one member of the public or, in more serious case, one senior officer and two members of the public. The committee may recommend any of the penalties which can be recommended by a designated officer. In addition, it may recommend demotion or discharge. The possibility of demotion or discharge will usually be a factor in the *Comité d'examen* des plaintes decision to refer a matter to a discipline committee rather than a designated officer.

As in the case of a penalty recommended by a designated officer, the discipline committee may only recommend a penalty. The director general of the force may confirm, alter or disregard the committee's recommendations. In the QPF, the director general's decision to demote or discharge a member must be approved by the Solicitor General of Quebec.[163] An appeal lies to an arbitrator who reviews the "reasonableness" of the decision. A finding of "unreasonableness" allows the arbitrator to annul or modify the decision.

Criminal Offences

There is no statutory requirement to await the results of a criminal prosecution before commencing disciplinary action. In practice, the MUC Police commences disciplinary proceedings and then holds them in abeyance pending the outcome of the criminal matter. The QPF regards the two proceedings as completely separate and has proceeded concurrently in the past.

There is no specific provision in the *MUC Regulation* dealing with the effect of a criminal conviction on a member of the MUC Police, however,

> [a] policeman must at all times conduct himself with dignity and avoid any behaviour likely to make him lose the confidence and the consideration that his duties require

> or to compromise the prestige or the effectiveness of the Police Department of the Community.[164]

The *QPF Regulation*, on the other hand, make specific provision:

> 11. A member must respect the authority of the law and the courts and must cooperate in the administration of justice.
>
> The following, in particular, constitute breaches of discipline:
>
> (a) contravening any law ... in a manner likely to compromise the performance of his duties.
>
> (b) being convicted of or pleading guilty to an offence under the *Criminal Code* on prosecution brought by indictment or pleading guilty following an information relating to an offence under the *Criminal Code* which, according to the information, is indictable;...[165]

It should be noted that unless the offence is indictable, the only way by which the QPF can discipline an officer for contravening a law is by proving that the violation compromises the officer's performance of his/her duties.

3) Miscellaneous
Probationary Constables

The term of probation in both forces is one year. Both collective agreements provide that probationary constables can only be dismissed for cause, such as poor performance or aptitude. The personnel departments of the forces document the probationary constables' performance and, where deemed appropriate, forward a recommendation for dismissal to the commanding officer. There is no hearing and the probationary constable has no right to grieve the dismissal. Notwithstanding this, both the MUC Police and OPF associations have successfully grieved dismissals of probationary constables on the grounds that performance evaluation results had been improperly compiled. Given the difficulties with their performance evaluation system, management of the OPF has found it easier to dismiss members through the disciplinary system than under the collective agreement.

Non-feasance Dismissals

Both the *QPF Regulation* and the *MUC Regulation* provide that failure to work "diligently" or conscientiously", or negligence in carrying out duties are breaches of discipline.[166] Proving the requisite elements has been sufficiently difficult that no member, other than probationary constables, of the two forces has been dismissed for poor performance under the *Quebec Police Act* or the collective agreements.

4) The New System

The new system in Quebec is unlike any other system in effect or contemplated in Canada. The Quebec National Assembly has recognized that certain disciplinary breaches for which police officers are disciplined fall into the realm of matters of public trust. At the same time, the majority of charges laid against police officers are related to the internal discipline of the police force and are not related to matters which would disquiet the public.

The National Assembly felt that breaches of the public's trust were a matter of ethics or deontology (moral obligations) and required special attention and treatment in the disciplinary system. As a result, under the new system, any transgression by a police officer of the Code of Ethics[167] will be dealt with in accordance with *Bill 86*. A non-deontological matter will be handled under the traditional disciplinary process.

The first level of the new process is the Office of the Police Ethics Commissioner. This office consists of a Commissioner (a lawyer with at least 10 years of experience) and three Deputy Commissioners.[168] The office receives and examines any complaint lodged by a member of the public against an officer in the performance of his/her duties.

The Commissioner may conciliate the matter with the permission of the parties[169] or conduct an investigation, the purpose of which "is to allow the commissioner to establish whether a citation before the Comité de déontologie policière is warranted".[170]

> 74. Upon completion of the investigation, the commissioner shall examine the investigation report. He may
>
> (1) dismiss the complaint, if he is of the opinion that it has no foundation in law or is frivolous or vexatious, or that the evidence is clearly insufficient;
>
> (2) cite the police officer to appear before the ethics committee if he is of the opinion that the complaint warrants such action;
>
> (3) refer the case to the Attorney General.
>
> ...
>
> 83. The Commissioner may, in addition to exercising his powers under section 74,
>
> (1) recommend to the director of the police force that he submit the police officer to a medical evaluation or to a period of refresher training provided by a police training institution;
>
> (2) inform the director that the conduct of the police officer was appropriate;

(3) make to the director any recommendation he deems expedient for the enforcement of the Code of ethics.

The next level of the process is the Comité de déontologie policibre (police ethics committee). The committee will be comprised of three divisions, one for the QPF, one for the MUC Police and one for the other municipal forces in the province.[171] The members of the committee are lawyers with at least five years' experience, police officers and other members who are neither lawyers nor police officers.[172] There is a Chairman and three vice-chairmen, all of whom are lawyers with at least ten years' experience.[173] The police officers for each division are appointed after consultation with representatives of the appropriate police force, and other members are appointed after consultation with representatives of the appropriate municipalities.[174] The Committee sits in panels of three (i.e. a lawyer, a police officer and a member who is neither a police officer nor a lawyer) and a decision of the panel is a decision of the committee.[175]

The panels will hear and dispose of allegations of unethical conduct on the part of police officers and review decisions of the Police Ethics Commissioner.[176] The panels will decide by a majority vote[177] "whether the conduct of the police officer constitutes a transgression of the Code of ethics and, if so, shall impose a penalty"[178] consisting of a warning, a reprimand, suspension without pay for a maximum of 60 days, demotion or dismissal.[179]

Appeals from a decision of the police ethics committee will lie to a judge of the Court of Quebec.[180] Although the Court will normally review appeals on the record, it will have the power to hear additional "relevant and useful evidence".[181] The Court will be able to confirm or quash the findings of the police ethics committee "and render the decision which in [its] judgment, should have been rendered in the first instance,"[182] and its decision will not be subject to appeal or review by an arbitrator.[183]

Miscellaneous

One particularly interesting departure from previous procedure in Quebec, and elsewhere in the country, is the fact that a police officer can be investigated, a finding of unethical conduct can be made against him/her, and a sanction can be imposed even if the officer has resigned from the police force before the process has been completed.[184] This may be to prevent a police officer from resigning to avoid an inquiry and then enlisting in another force. *Bill 86* does not deal with probationary constables, does not make special provision for police chiefs and, does not deal with nonfeasance issues. The Code of ethics does, however, require a chief of police who becomes aware of a possible contravention of the Code to advise, in writing, the citizens concerned of their rights under *Bill 86* and to provide a copy to the Police Ethics Commissioner.[185]

Chapter V

CHARACTERISTICS AND PRACTICES OF PRIVATE INDUSTRY DISCIPLINARY DISMISSALS

Some caution should be expressed before a review is undertaken with regard to private-sector employment practices. As Part IV made clear, any views on the similarities in police discipline found across Canada must be tempered by the realization that there are some distinct differences in both the philosophical and the practical approaches to the discipline and discharge of police officers in the various jurisdictions. This multiplicity of approaches is compounded by the apparent differences between, first of all, the public and the private sectors, and second, the special nature of law enforcement, as discussed in Part II of this paper.

For these reasons any attempted comparisons may seem to be of very limited value. Despite these limitations, however, it should also be noted that a careful approach may yield some benefit. The study will therefore consider the approach and experience of two private-sector industrial enterprises: IBM Canada Ltd and Cominco Ltd (B.C. Division).

A. IBM Canada Ltd

IBM has approximately 13,000 employees. None of these employees is unionized. A spokesman for IBM indicated that, contrary to some popular perceptions, at IBM non-unionized employees are not subjected to the precarious employment opportunities perhaps found elsewhere in the high-technology industrial field. The spokesman stated that while the (computer) industry's standard rate of attrition usually hovers near 30 per cent, the attrition rate at IBM is significantly lower. It fluctuates between three per cent and five per cent annually (attrition is defined as including resignations, dismissals and deaths). IBM has long been heralded as a progressive company in its approach to labour relations. For that reason, an examination of the factors that are keys to its success, and the possible reasons behind the high rate of employee satisfaction found among its staff, may prove valuable for the purposes of this paper.

IBM does not have a probationary period for new employees. They are immediately treated as integral parts of the company. This means that they are entitled to all employee benefits without delay. The conditions for continued employment are the same for all employees in the company. In order for an employee to be discharged, there must be a substantial breach of the company's rules and regulations. In addition, employees may be dismissed for performance-related issues, although this is a protracted process. It is described briefly below.

All dismissals for breaches of rules and regulations are subject to review by an arbitration panel, with the burden of proof determined by the appropriate provincial labour legislation. Some examples of proscribed behaviour that merits immediate discharge include: theft; constant lateness; abusive or disruptive practices in the workplace; and corporate or industrial espionage. Although IBM could not provide precise figures regarding the number of employees who have been discharged, judging from the attrition statistics, it seems clear that relatively few employees are fired. In addition, there are extremely few "wrongful dismissal" suits brought by individuals who have been discharged by the company. This is possibly indicative of the care with which IBM

handles issues related to a decision to dismiss an employee.

Unless a dismissal is caused by a breach of the rules and regulations--which usually leads to a summary dismissal without notice for cause--the origins of the dismissal can often be traced from the annual performance review. The company bases its employee evaluation on a five-point scale. One (1) represents the top of the scale and five (5) represents the bottom. The company is not seriously concerned about those employees who fall in the range from 1 to 4, although pay increases are directly related to performance rankings. If an employee receives a performance ranking of 5, however, the company initiates remedial measures. It is incumbent on the employee's manager to justify the low ranking, develop an action plan, and establish a time-frame for solving the problem. In addition, the manager must meet with the employee, outline clearly the concerns of the company, and explain the possible consequences of failing to meet the responsibilities set out in the job description. The implementation of the remedial program is not limited to the employee dealing with the matter in isolation. The manager works closely with the employee to help solve the problem to everybody's satisfaction. If these remedial steps fail to ameliorate the situation adequately, ultimately the employee must be dismissed. Upon dismissal, however, IBM takes the additional step of providing the employee with psychological assistance and out-placement counselling at the company's expense.

Of course, managers are also subject to performance reviews, and one of the items a manager's superior will assess is the ability of the manager to handle problems effectively and not shirk responsibilities in order to appear in a favourable light before a superior.

The outstanding feature--and one for which IBM is highly respected among human resource management specialists--is its practice of treating employees as the company's most valuable resource. The company makes a substantial investment in the early stages of an employee's career in the belief that the employee will honour this effort and commitment, and offer steadfast and productive service in return. So far, this philosophy appears to have substantially benefited both IBM and its employees.

B. Cominco Ltd (B.C. Division)

The B.C. Division of Cominco employs approximately 4,500 people. These employees are represented by two unions: the Office and Technical Workers' Union and the United Steel Workers' Union. The diversity of the company has precluded the formulation of a definitive Policy and Procedure Manual. Therefore, there are no formal, company-generated disciplinary procedures. The unions and the company rely upon their historical working relationship, the collective agreements, and the B.C. *Industrial Relations Act*.[186]

Cominco uses the progressive discipline method to deal with employee problems, a practice which it believes has worked reasonably well in managing its human resources. According to the company, there have been no dismissals for cause in recent history; nor, it asserts, have there been any wrongful dismissal suits filed against it. New unionized employees are placed on a five-month or 360-hour probationary period, depending on which union is involved. In contrast, management

employees undergo semi-annual performance reviews, although the company stresses that these are not to be understood as probationary periods.

Cominco is in an interesting and unusual situation because it is currently going through a period of "downsizing". In addition, Cominco is not relying on attrition and retirement alone to reduce its employee ranks. Employees are terminated with an appropriate notice period and a compensation package that corresponds to the age of the employee, the length of service, the type of position held, as well as to other factors that are normally considered in similar situations, and to which arbitrators have made ample reference in labour law cases. Of the police jurisdictions surveyed for this paper, only the Edmonton Police Service has terminated employees in this fashion. It is unlikely that anything would hinder the general implementation of such a practice, should management and employees come to a mutually satisfactory arrangement.

These two case studies represent innovative and effective human resource management approaches to the issue of disciplinary discharges. Although it should be reiterated that these situations must be viewed in light of the particular circumstances of the private sector, these experiences appear to indicate that by demonstrating an interest and concern for the employee, better relationships, and subsequently a more productive and better motivated workforce can become a reality. Admittedly, circumstances differ, but a positive attitude can solve problems that would otherwise remain insoluble.

Chapter VI

MODELS AND OPTIONS FOR DISCIPLINARY DISCHARGES

In addition to the approaches found in the two case studies above, human resource managers, both within and outside the policing sector, have developed other approaches to severing employer-employee ties in ways that minimize pain and complications for both parties. This section will briefly outline some of these approaches.

A. Internal Disciplinary Matters vs External Ethical Matters

As indicated earlier, policing is arguably the most complicated of all professions in terms of discipline. For example, in comparison to the typical employer-employee relationship that is found in private industry, in the police community the relationship takes the form of a triangle. This triangle is formed by the following three vested interests: first, the interests of the individual members of the profession itself, who take professional pride in their work, feel the need to defend themselves against outside pressures, and are concerned about the behaviour of colleagues who show the profession in a bad light; second, there is the usual employer-employee interest found in private industry, whereby the employer is concerned about the smooth running of the organization and the public relations exercise that this sometimes involves, and the controlling of "trouble-makers" among the rank-and-file; and third, and perhaps most important, the clear, and increasingly vocal, interest of the public in the conduct of police officers and the guarding of the public trust placed in those officers, and which is sometimes violated by them.

As an example of increasing popular activism in the field of policing oversight, one need only consider the current debate surrounding the public's demand for independent boards to review alleged police misconduct. While this debate focuses on the important issue of public trust violations, the addition of an intervening party (namely, the public) will only render more complex the already very complicated (and manifestly so) issue of police discipline. In addition, as was seen in the earlier sections which discussed various Canadian Police Acts and the regulations governing personnel performance, the problem is exacerbated by the fact that those persons involved have to cope with a confusing array of rules that cut across different areas of the law. It is clear that there is a strong and growing need to rationalize the system.

Police unions and associations have expressed concerns that much of the disciplinary framework is designed to deal with behaviour or actions that focus exclusively on the employer-employee relationship, much like rules and regulations governing behaviour in the workplace, such as, for example, dress codes and punctuality. It is suggested that these rules should be removed from the legislation setting out codes of conduct and placed in a more appropriate forum, such as the labour relations process dealing with internal discipline. Police unions and associations question whether, for example, a constable who is insubordinate or who abuses police property (without jeopardizing the public) is any different from a private sector employee who commits the same infractions. They insist that there are no relevant distinctions to be drawn, and that such matters are better placed in the context of labour relations.

Quebec and Ontario have attempted to address this concern in new legislation designed to

respond to the public concern about the growing complexity of discipline within policing. In both cases, a body outside the police force will be involved in resolving complaints from the public. Where disciplinary proceedings are instituted as a result of the complaint, the external body will retain a good degree of control over the outcome of those proceedings. In both cases, though, purely internal disciplinary matters will continue to be dealt with according to the traditional procedures. Consequently, the police officer who is insubordinate will continue to be dealt with internally, while the police officer who is rude to a member of the public will be dealt with under the new procedures.

The major difference between the Quebec and Ontario systems will be the type of event that triggers the external involvement. It would appear that in Ontario it will be the fact of a complaint from a member of the public which will bring about a proceeding under Part VI of the *Ontario Police Services Act, 1990*,[187] whereas in Quebec it will be a breach of the Code of Police Ethics which will be the basis for following the new procedures, regardless of whether a public complaint has been filed.

In both systems, a conscious decision has been made to include the interests of the public in the determination of appropriate discipline on the one hand, while maintaining the traditional, closed internal procedures on the other. Equally, both systems have rejected the RCMP model in which there are two external bodies, one to review public complaints and one to review discipline, which only make recommendations to the Commissioner of the Force, opting instead for a final determination to be made outside the police force.

Of the two, Quebec seems to have made the clearest distinction between purely internal discipline dealing with matters inherent in the efficient and effective administration of the police force, about which there is little sustained public interest, and external matters which bring into question the police officer's relationship with and responsibility to society. This seems to be a step along the road advocated by police associations whereby purely internal matters will be handled in a manner much more akin to private-sector labour matters than quasi-criminal charges under a code of discipline. Whether this is the way in which matters will develop, and how the Ontario approach will actually differ from the Quebec approach, will depend on the regulatory scheme adopted in each province and on the manner in which the external bodies in each province conduct themselves. Whether these two approaches will meet the differing needs and interests of employees, management and the public will only be determined after several years' experience.

B. Private Sector Alternatives

Discharging an employee can be a complicated and time-consuming process. It is frequently frustrating for both the employer and the employee, especially where the employee decides to contest the legitimacy of the employer's "cause". The following methods are possible ways to avoid the complications found in the formal discharge process. Organizations in the private sector have found them useful as means to avoid delay and the organizational dysfunction caused by a difficult discharge process. It should be noted that these alternatives are more suitable for situations involving "poor" performers.

1) The Golden Handshake and the Golden Bullet

The early retirement package (the "golden handshake") sometimes offered to private industry employees is usually offered near the end of an individual's career, and is not typically used as an alternative to disciplinary dismissal. It should be noted that some police departments admit to having offered early retirement packages to senior administrators who have ceased to be effective within the organization. When the Edmonton Police Department was in the process of restructuring its force, early retirement packages were offered to middle-management members who could accept the offer on a voluntary basis. There were no disciplinary motivations related to this offer.

Golden handshakes can be difficult to administer:

> [T]he incentive should be attractive enough to induce employees to accept it and avoid a subsequent [work force reduction measure], and it should not be offered to everyone. While a company cannot prevent a key employee from retiring early, a company is under no obligation to give him or her a cash incentive to do so.[188]

Unless the process is handled with circumspection, companies offering golden handshakes may find themselves with legal problems. It is important that the employer document the process to protect itself from future charges that the retirement was coerced, thereby avoiding the accusation that it contravened any applicable human rights laws. This type of situation has occurred in the United States.[189]

Harry Turk provides four points to which companies should adhere if they plan to institute a golden handshake program:

> 1. A cash incentive should be offered to employees in exchange for their acceptance of early retirement.
>
> 2. The program may either be selective or across the board, in either event it must be strictly voluntary -- there can be no reprisals against employees for refusing the offer.
>
> 3. The company must plan its communication of the programs to employees -- make the offer in private and make it clear that it is not related to employee performance.
>
> 4. Each employee that opts to accept the offer must execute a written agreement that states that the employee voluntarily accepts early retirement in consideration of the additional sum of money (or benefits, or both), and a release that discharges the company from all legal claims arising from human rights legislation, employment standards or labour legislation.[190]

If an employer wishes to rid itself of employees who are not nearing retirement, the more common approach is the "golden bullet". Essentially, the golden bullet is used when there are no other means available to sever an employer-employee relationship with a worker who has become a problem. The company simply offers the employee a package of incentives to resign voluntarily from the position. As with the golden handshake, this procedure has been used more in privately-run, profit-oriented organizations. The costs to the organization are seen as an added, but necessary, business expense. The attitude taken is that it is cheaper in the long run to pay the employee to leave immediately than it is to keep him or her around. Clearly, this is not a good situation for either party, and is avoided as much as possible.

2) Job Reclassification

If an employee is not functioning at the required performance level in a position, and management has tried to improve the performance by means of the usual methods, an alternative to dismissal for cause may be job reclassification. It is possible that the employee's performance level could be higher in another position. Indeed, if the idea is broached in a sensitive and non-punitive manner, the employee may welcome the opportunity to move into a fresh position. It is important that it is made clear to the employee concerned that the process is completely voluntary, to avoid future charges of constructive dismissal. This method has been used in policing by the RCMP. If, due to health reasons, a member can no longer fulfil the duties of a police officer, the member has the option of reverting to civilian status. This enables the member to continue working for the Force, retain all benefits, including a pension, and still have the personal satisfaction of making a contribution to the Force. It should be noted, however, that it is sometimes difficult to persuade long-time members that they can no longer function as a police officer. Again, the procedure is not seen as an alternative to disciplinary discharges.

3) Out-placement

Out-placement counselling is another means to persuade employees to leave without having to resort to a disciplinary discharge. It is becoming common, particularly in the United States, for larger firms to provide employees with counselling and guidance in choosing new jobs or new careers. There are also independent organizations that specialize in out-placement counselling.

The presence of such an option encourages employees, who believe, or who are advised, whether formally or informally, that they have no future with their present employer, actively to seek alternative employment. The result is that the company solves a problem and the employee has another opportunity to succeed. In the process, the negative connotations associated with a dismissal are avoided.

C. Summary

While the above options are feasible alternatives, most management theoreticians believe that the best solution is salvaging the employee wherever possible. To do this may require changes in organizational structure, process, and philosophy.

It should also be noted that many cases which result in disciplinary dismissal among police officers relate to situations where the constable has committed a criminal offence. Such situations allow management only limited options in seeking alternative solutions.

Chapter VII

CONCLUSION

The value of an employee is far too great for management to neglect in planning for the future in the effort to ensure that the organization remains healthy. In police management some of the problems go beyond the labour relations context and may enter the political arena, particularly where the issue is one of public trust. This exacerbates an already delicate balancing act between the interests of the constable, management, and the public. Reality dictates that all of these interests must be accommodated to some degree in order to be able to achieve a workable solution to the problems faced in the area of police discipline, and particulary disciplinary discharges.

The intent of this paper is to provide an overview of the disciplinary discharge practices and procedures of Canadian federal and provincial police management; to comment on some of the labour relations issues involved in that practice; and to consider some of the options and models which exist now as possible alternatives, in order to point in the direction of potential changes. Whether these changes occur will depend on a number of factors.

It seems clear that there is a need for a multi-directional consultation process, with management, employees and the public exchanging views and concerns about the disciplinary process within law enforcement. The public interest should be more relevant in those areas involving police contact with the public, and less relevant where the matter is related more to labour relations.

Whether changes occur will depend largely on how receptive all parties are to initiatives from others, and on the ability of each party to consider seriously the concerns expressed in the course of consultations. Furthermore, police management needs to become more active as a lobby group for the improvement of the system through legislative amendments.

The greatest benefits, however, may lie in the changes to the philosophical and organizational structure of police forces. Clearly, the authoritarian management styles of the past will need to be discarded in order for police organizations to present a modern and flexible force that can compete for budgetary allocations, and function effectively on its share of the tax dollar. To accomplish these goals will require the implementation of effective and innovative managerial techniques, and a serious consideration of the experiences of the most progressive organizations, whether public or private.

NOTES

1. R.S.C., 1985, c. C-46.

2. W.B. Werther, *eh al*, Canadian Personnel Management and Human Resources, 2d ed. (Toronto: McGraw-Hill Ryerson, 1985) at xi.

3. B.B. Boyd, Management Minded Supervision, 3d ed. (New York: McGraw-Hill, 1984) at 202.

4. *Ibid*. at 214.

5. J.R. Redeker, "Discipline, Part 1: Progressive Systems Work Only by Accident" (1985) 62:10 Personnel 8 at 8.

6. *Ibid*.

7. *Ibid*.

8. J.R. Redeker, "Discipline, Part 2: The Nonpunitive Approach Works by Design" (1985) 62:11 Personnel 7 at 7.

9. D. Guth & R. Vogel, The Canadian Constable: An Endangered Species? (unpublished).

10. [1955] A.C. 457 at 489-490 (P.C.). *See also Ridge v. Baldwin*, [1964] A.C. 40 (H.L.) for an elaboration on this concept.

11. R.L. Jackson, "Police Labour Relations in Canada: A Current Perspective" in B.M. Downie & R.L. Jackson, eds, Conflict and Cooperation in Police Labour Relations (Ottawa: Dept of Supply and Services, 1980) 7 at 8.

12. [1979] 1 S.C.R. 311, 88 D.L.R. (3d) 671, cited to S.C.R.

13. *Ibid*. at 322-23.

14. *Ibid*. at 320.

15. [1987] 2 S.C.R. 541, 45 D.L.R. (4th) 245, cited to S.C.R.

16. Part I of the *Constitution Act*, 1982, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

17. *Supra*, note 15, at 560

18. *Ibid*. at 566.

19. (1967), 1(A) Union-Management Arbitration Cases 328 (Anderson).

20. *Ibid*. at 329.

21. (1985), 24 D.L.R. (4th) 274 (F.C.A.).

22. Quoted in the judgment by the Federal Court of Appeal, *ibid*. at 279.

23. RCMP ERC Decision file 2000-90-005 at 13.

24. H.W. Arthurs, D.D. Carter & H.J. Glasbeek, Labour Law and Industrial Relations in Canada, 2d ed. (Toronto: Butterworths, 1984) at 113.

25. *Ibid*.

26. D. McPhillips & G. England, "Employment Legislation in Canada" in J.C. Anderson, M. Gunderson & A. Ponak, eds, Union-Management Relations in Canada, 2d ed. (Don Mills, Ont.: Addison-Wesley, 1989) 43 at 48.

27. *See Re Anchor Cap and Closure Corp. of Canada, Ltd* (1949), 1 L.A. C. 222.

28. R.S.C., 1985, c. R-10, as am. R.S.C., 1985, c.8 (2d supp.) [hereinafter the *RCMP Act*].

29. *Royal Canadian Mounted Police Regulations*, 1988, SOR/88-361 [hereinafter the *RCMP Regulations*].

30. *RCMP Regulations*, Part III, ss. 38-58, pursuant to *RCMP Act*, s.38.

31. *See, for example, Commissioner's Standing Orders (Grievances)*, SOR/88-363.

32. *See* R.S.C., 1985, c. 8 (2d Supp.), s.16.

33. *RCMP Act*, sub. 45.46(2).

34. *See RCMP Act*, ss. 37-45.17.

35. *See RCMP Act*, ss. 41-42 for the range of penalties and the appeal procedure.

36. R.S.C., 1985, c. F-7. *RCMP Act*, subs. 42(4), 42(6).

37. A senior officer identified by the Commissioner for the purposes of discipline. *See Commissioner's Standing Order (Disciplinary Action)*, SOR/88-362.

38. *RCMP Act*, sub. 43(3).

39. *RCMP Act*, s.45.

40. *RCMP Act*, sub. 45.1(8). *See*, *Commissioner's Standing Order (Representation)*, SOR/88-365.

41. *RCMP Act*, sub. 45.12(1)

42. *RCMP Act*, sub. 45.12(3) provides for (a) dismissal, (b) a direction to resign, (c) demotion, or (d) forfeiture of up to 10 days pay.

43. *RCMP Act*, s.5.

44. *RCMP Act*, subs. 45.1(1), 45.14(1).

45. *RCMP Act*, sub. 45-15

46. *RCMP Act*, s.25.

47. *RCMP Act*, sub. 45.15(4).

48. *RCMP Act*, subs. 45-15(5), 34(3).

49. *RCMP Act*, subs. 45.15(5), 35(13).

50. *RCMP Act*, sub. 45.16(6).

51. *Supra*, note 36; see, *RCMP Act*, sub. 45.16(7).

52. *RCMP Regulations*, para. 39(2)(b).

53. *RCMP Act*, sub. 43(8).

54. *RCMP Act*, sub. 45.18(1).

55. *RCMP Act*, sub. 45-18(6)

56. R.S.B.C., c. 331.1 [hereinafter the *BC Police Act*].

57. B.C. Reg. 330/75 [hereinafter *BC Regulation*].

58. *BC Regulation*, Appendix A

59. *BC Regulation*, sub. 33(1).

60. *BC Regulation*, s.7.

61. *BC Regulation*, sub. 10(i); Appendix B, Form 2.

62. *BC Regulation*, s.13; Appendix B, Form 3.

63. *BC Regulation*, s.18. See *Joplin v. Chief Constable of the City of Vancouver* (1982), 144 D.L.R. (3d) 285, 2 C.C.C. (3d) 396, [1983] 2 W.W.R. 52 which declared a limit on the right to counsel in sub. 18(2) to be ultra vires.

64. *BC Regulation*, sub. 23(1).

65. *BC Regulation*, sub. 37(i).

66. *BC Regulation*, ss. 37(2), 38, 39.

67. *BC Regulation*, s.40.

68. *BC Regulation*, s.42.

69. *BC Regulation*, sub. 10(2).

70. *BC Regulation*, s.34.

71. *BC Regulation*, sub. 26(4) has yet to be proclaimed.

72. R.S.B.C., c. 212.

73. (1983), 149 D.L.R. (3d) 405.

74. R.S.B.C. 1979, c. 212 as am. *Industrial Relations Reform Act*, 1987, S.B.C. 1987, c. 24.

75. *BC Regulation*, Part 2, s.50.

76. *BC Regulation*, para. 50(2) (g).

77. *BC Regulation*, para. 50(2) (h).

78. *BC Regulation*, para. 50(2)(i).

79. *1988-90 Collective Agreement Between the Vancouver Police Board and the Vancouver Police Union*, sub. 10.4(b).

80. *Ibid*.

81. *Ibid*.

82. *BC Police Act*, s.56.

83. *BC Regulation*, sub. 52(5).

84. *BC Police Act*, s.58.

85. *BC Police Act*, s.57.

86. *BC Police Act*, s.59.

87. *BC Police Act*, s.60.

88. *BC Police Act*, sub. 60(2); *BC Regulation*, sub. 53(3).

89. *BC Police Act*, s.63

90. *BC Police Act*, s.64.

91. *BC Police Act*, s.65.

92. R.S.O. 1980, c. 381 [hereinafter cited as *Ontario Police Act*].

93. See R.R.O. 1980, Reg. 791, as am. 0. Reg. 74/84; 0. Reg. 702/85 [hereinafter cited as *Ontario Regulation*].

94. S.O. 1984, c. 63 as am. S.O. 1986, c. 31, s.1 [hereinafter the *Complaints Act*].

95. *Police Services Act*, 1990, S.O. 1990, c. 10, not yet in force [hereinafter *Police Services Act*].

96. *Ontario Regulation*, Schedule, para. 1 (c) (ii).

97. *Ontario Regulation*, Schedule, para. 1 (a) (vii).

98. *Ontario Regulation*, sub. 13(3).

99. For a discussion of the standard of proof under the *Ontario Police Act*, see Kaye (1986), 2 O.P.R. 697 (O.P.C.).

100. See *Ontario Regulation*, paras. 16(4)(a)-(c) for municipal constables and paras. 51 (a)-(c) for members of the OPP.

101. See *Ontario Regulation*, paras. 20(2)(a)-(f) for municipal constables and paras. 51(8)(a)-(f) for members of the OPP.

102. See *Ontario Regulation*, for municipal constables, sub. 16(7) for minor offences, sub. 17(7) for major offences; for members of the OPP, sub. 51(7) for minor offences, sub. 52(6) for major offences.

103. See *Ontario Regulation,* s.16 for minor offences, s.19 for major offences

104. See *Ontario Regulation*, s.58 for appeals to the Commission from the OPP, s.24 for appeals from municipal forces.

105. *Complaints Act*, sub. 14(2).

106. *Ontario Regulation,* s.23.

107. *Complaints Act*, sub. 11 (4).

108. *Complaints Act*, s.14.

109. *Complaints Act*, s.18.

110. *Complaints Act*, sub. 19(3).

111. *Complaints Act*, sub. 23(15), made applicable by sub. 15(1).

112. *Complaints Act*, s.16.

113. *Complaints Act*, sub. 23(i).

114. *Complaints Act*, subs. 23(15), (16) and (17).

115. *Complaints Act*, s.24.

116. *Complaints Act*, s.27. It would appear, though, that this section only applies to municipal forces.

117. See *Ontario Regulation*, para. 27(e) for municipal constables; s.60 provides that the Commission may take similar action against a member of the OPP, provided that it has first conducted a formal inquiry pursuant to sub. 43(3) of the *Ontario Police Act*.

118. R.S.O. 1980, c. 228, para. 2(d).

119. *Ontario Regulation*, s.27. It would appear, though, that this section only applies to municipal forces.

120. *Police Services Act*, ss. 56-71.

121. *Police Services Act*, s.56.

122. *Police Services Act*, para. 56(a).

123. *Police Services Act*, s.58.

124. *Police Services Act*, ss. 72-111.

125. *Police Services Act*, s.59.

126. *Police Services Act*, s.59.

127. *Police Services Act*, s.68.

128. *Police Services Act*, sub. 60(9).

129. *Police Services Act*, sub. 61 (1).

130. *Police Services Act*, sub. 61(3).

131. *Police Services Act*, s.63.

132. *Police Services Act*, sub. 63(6).

133. *Police Services Act*, s.64.

134. *Police Services Act*, s.66.

135. *Police Services Act*, s.62.

136. *Police Services Act*, ss. 75, 76.

137. *Police Services Act*, s.80.

138. *Police Services Act*, ss. 82, 83.

139. *Police Services Act*, sub. 84(1).

140. *Police Services Act*, s.85.

141. *Police Services Act*, ss. 86-88.

142. *Police Services Act*, s.89.

143. *Police Services Act*, s.90.

144. *Police Services Act*, s.91.

145. *Police Services Act*, s.93.

146. *Police Services Act*, s.96.

147. *Police Services Act*, s.97.

148. *Police Services Act*, s.44.

149. *Police Services Act*, s.104.

150. *Police Services Act*, s.40.

151. *Police Services Act*, s.47.

152. R.S.O. 1977, c. P-13 [hereinafter *Québec Police Act*].

153. See *An Act respecting police organization and amending the Police Act and various legislation*, L.Q. 1988, c. 75, as am. L.Q. 1990, c. 27, [hereinafter *Bill 86*].

154. *Regulation Respecting the code of ethics and discipline of the members of the Sûreté du Québec*, O.C. 467-87, [hereinafter *QPF Regulation*]; *Regulation respecting the ethics and discipline of the policemen of the Communauté urbaine de Montréal*, R.R.O., c. C-37.2, r.1, [hereinafter *MUC Regulation*].

155. *MUC Regulation*, s.15.

156. *QPF Regulation*, s.33.

157. *QPF Regulation*, s.45; *MUC Regulation*, s.26.

158. *QPF Regulation*, s.47; see also *MUC Regulation*, s.28.

159. *MUC Regulation*, s.41.

160. *QPF Regulation*, s.75.

161. *MUC Regulation*, s.62.

162. *QPF Regulation*, s.78.

163. *QPF Regulation*, s.81.

164. *MUC Regulation*, s.10.

165. *QPF Regulation*, s.11.

166. See *MUC Regulation*, ss. 2-4; *QPF Regulation*, ss. 13-15.

167. *Code of ethics of Quebec police officers*, O.C. 920-90.

168. *Bill 86*, ss. 36-50.

169. *Bill 86*, s.58.

170. *Bill 86*, s.64.

171. *Bill 86*, s.91.

172. *Bill 86*, s.94.

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176. *Bill 86*, s.89.

177. *Bill 86*, s.128.

178. *Bill 86*, s.129.

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181. *Bill 86*, s.143.

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184. *Bill 86*, s.53.

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188. H.N. Turk, "The 'Golden Handshake': An Alternative to Reduction in Force" in G.R. Ferris & K. Rowland, eds, Human Resources Management: Perspectives and Issues (Boston: Allyn & Bacon, 1988) 407 at 408.

189. See *Ackerman v. Diamond Shamrock Group*, 670 F.2d 66 (6th Cir. 1982).

190. Turk, *supra*, note 188 at 409.

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