



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 053 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Monday, October 22, 2012

—
Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

Monday, October 22, 2012

• (1530)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone. This is meeting number 53 of the Standing Committee on Public Safety and National Security, on Monday, October 22, 2012. Today we are continuing our consideration of Bill C-42, An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts.

In our first hour, we will hear from Mr. Paul Kennedy, who is appearing as an individual. He has been in the Department of Public Safety in the past.

Also, by video conference from Upper Fraser, British Columbia, we have Darryl Plecas, Royal Canadian Mounted Police research chair and the director of the Centre for Public Safety and Criminal Justice Research at the School of Criminology and Criminal Justice, University of the Fraser Valley. He is also appearing as an individual today.

I would invite each of you to make your opening comments. Mr. Kennedy, I would invite you to go first. Then we will proceed with rounds of questioning from all parties and from different individuals around the table.

Welcome, Mr. Kennedy. Welcome, Mr. Plecas.

Mr. Kennedy, go ahead, please.

Mr. Paul Kennedy (As an Individual): I certainly want to thank you for offering me the opportunity to comment on Bill C-42.

I will be making comments with respect to parts VI and VII, which deal with the civilian review and complaints, as found at approximately page 35 of the bill.

To be effective and credible, a review body must, as of right, be able to access any information held by the RCMP that it deems necessary and relevant. The provisions of Bill C-42, at pages 40 to 44, establish an elaborate regime that authorizes the commissioner of the RCMP to withhold from examination and review by the civilian review body a broad range of privileged information. The proposed regime calls for the designation of a third party, who will be afforded access to the information, and, following receipt of submissions, will offer observations concerning the relevance of the information to the review undertaken by the civilian review body. Throughout the entire process, the review body will be kept in the dark as to the nature of any information that it has in fact requested.

I envisage that these provisions would have greatest application in respect of the federal mandate of the RCMP as it pertains to

provincial, interprovincial, and international organized crime, economic crime, terrorism, and a host of investigations that entail collaboration with foreign agencies both in the police and national security areas.

The scheme as outlined in the proposed legislation is a direct repudiation of the policy recommendations made by Justice O'Connor of the Ontario Court of Appeal, who sat as a commissioner on the Arar inquiry, as well as the observations of Mr. Brown in respect of his task force report of December 14, 2007, on governance and cultural change in the RCMP. The existence of such a regime in the legislation fails to take note of the abuse to which such claims of privilege can be put by the RCMP, which abuse was a subject of severe criticism by Justice Major, formerly of the Supreme Court of Canada, in the Air India inquiry. This provision also stands in stark contrast to the power of access afforded the Security Intelligence Review Committee in respect of information held by CSIS.

Of some concern as well are the provisions of proposed section 45.74 as found at page 64 of the bill. Proposed subsection 45.74(1) authorizes the chair of the civilian review body to:

suspend an investigation, review or hearing with respect to a complaint if, in the Commission's opinion, continuing it would compromise or seriously hinder an ongoing criminal investigation or proceeding.

Proposed subsection 45.74(2) covers the same factual situation, but states that the chair of the civilian review body shall—it's mandatory—suspend the process if “requested to do so in writing by the Commissioner” of the RCMP.

One must ask oneself how much credibility the civilian review body would have in the public eye were it to have its review process terminated by a letter authored by the head of the organization over which it purports to exercise review. I would submit that it would have no credibility.

The bill provides for service standards respecting time limits with which the review body will deal with complaints. Other than a provision found in proposed section 45.63, which is on page 57 of the bill, the RCMP has no firm timeframes. The only obligation imposed on the RCMP is to respond as soon as feasible. Inordinate and unjustifiable delay was the hallmark of the RCMP during the four-plus years that I was chair of the Commission for Public Complaints Against the RCMP. I should note it wasn't just because I was the chair. When I was there I inherited a situation where there were backlogs of five years. The first case I signed was 10 years old. It was a cell death case and I was writing a letter to the family members of someone who had died 10 years before. It was not a very good situation.

•(1535)

I believe that an essential role of civilian review is to restore and maintain the public's confidence in the police. Delay in resolving complaints erodes the review body's ability to fulfill that function.

I believe that the chair of the review body should be appointed for a fixed non-renewable term. Ideally, the chair should be an officer of Parliament, in light of the national role the RCMP fulfills in the three territories and eight provinces.

Thank you for your kind attention.

The Chair: Thank you very much, Mr. Kennedy.

We'll move to Mr. Plecas, please.

Dr. Darryl Plecas (Royal Canadian Mounted Police Research Chair and Director of the Centre for Criminal Justice Research, School of Criminology and Criminal Justice, University College of the Fraser Valley, As an Individual): Good afternoon, everyone, and thank you very much for the opportunity to appear before you.

I am speaking to you as someone who has recently completed a number of research projects that I think might relate to the issue at hand. Two of those involved reviews of complaints against the RCMP, one in the Atlantic region and one in British Columbia, which was a 15-year review and analysis of complaints against the RCMP. More important was a five-year review of code of conduct cases against RCMP officers in British Columbia.

Those reports I can certainly make available to you. They're available online, I think, through our university, but to be sure that you have them, I will make arrangements to have them sent by email to you today.

The results of the review of the code of conduct cases, I must say, were disappointing to our research team. We had to conclude that the process of dealing with code of conduct cases in the RCMP needs to be such that there needs to be a greater amount of objectivity in terms of dealing with complaints, formally and informally, and a more independent review. Of course, that is being addressed, certainly to a large degree, by the proposed appointment of a commission.

The other thing that was most disturbing to us was the matter of penalties awarded to people who are found in contravention of the act and are guilty of code of conduct violations. In particular, the penalties that have been awarded do not seem to reflect at all the seriousness of the violations.

As it is, it would appear that dispositions reflect a clear tendency toward great leniency. In particular, that cluster of cases involving integrity issues, which is about one-third of cases, in our view, as we concluded, should be dealt with in the most serious manner. The RCMP should have zero tolerance for cases where people have been found to lack integrity. That threshold involving integrity issues, in our view, should be zero tolerance.

The new act, as I read it, appears, at least in spirit, to reflect the need to treat cases more seriously.

We're also encouraged by what has happened since the release of our reports. I think it's a fair comment to say there is a very clear awareness on behalf of the RCMP that change is needed and quickly.

There is also a clear recognition there needs to be that level of independence, which hasn't been there before.

There's a recognition there are things that need to be addressed that lead up to these kinds of cases happening in the first instance. That change is with respect to recruitment, selection, training, promotion, and the whole matter of messaging and changing the culture within the RCMP with respect to what's acceptable and not acceptable behaviour.

In considering these proposed changes overall, I would say that it certainly appears to be a step in the right direction. I wish there were a little more clarity on the whole matter of the level of dispositions awarded for one offence or another.

It's my understanding that the commissioner will now have greater leeway and discretion to dismiss people for some of these cases. That would certainly be a positive step forward, particularly given what's been the case historically.

•(1540)

In our review, for example, looking at some 80 code of conduct cases a year in British Columbia, it was almost never that someone was dismissed regardless of how serious the offence was. I will remind the committee that one-third of those were Criminal Code violations, and another third were integrity issues.

I'll leave it at that for now.

The Chair: Thank you very much, Mr. Plecas.

We'll move into our first round of questioning.

Ms. Bergen, please, for seven minutes.

Ms. Candice Bergen (Portage—Lisgar, CPC): Thank you very much, Mr. Chair.

I want to start with Mr. Kennedy.

Thank you both for being here. We appreciate it very much.

Mr. Kennedy, I'm going to go over the three areas you had difficulty with so I know whether I heard you correctly.

The first was on withholding certain information that would be available to the new civilian review and complaints commission. The other was on the review body being kept in the dark regarding the information they would be receiving. The third was on the service standards and no actual time limits or restraints on how long the investigation would take.

On the whole issue of information, I'm frankly a little surprised. We just had the current chair of the complaints commission here. We have heard from a number of other witnesses who are really pleased with the measures that Bill C-42 has taken in making sure the complaints commission could get the information that's required and could summons information and witnesses. I would like some clarification on how much further you think we should go on that.

In regard to the time constraints, there are pros and cons to both. When you put time restraints on an investigative body or a complaints commission, those can work against the complaints commission, just as if, were it open-ended and extended 10 years, that would obviously not be desirable.

I don't know whether it is a fair assumption that not putting time constraints on the complaints commission would automatically create delays. I would just caution all of us as we're reviewing this bill that certainly there are pros and cons to both. I would think this bill would intend to give the complaints commission the time it needs to do the job, as opposed to putting time constraints on the commission and then not getting the job done properly. It's looking at the pros and cons of both scenarios.

I just have a few moments, but I'll give you a moment to comment, if you'd like, and then I'd like to go on to Mr. Plecas.

● (1545)

Mr. Paul Kennedy: In terms of the information, Justice O'Connor had a two-phase inquiry. One was to look at the treatment of Mr. Arar, and the second was to make policy recommendations vis-à-vis new legislation for oversight of the RCMP, in his case with national security. He made very specific recommendations as to access, and said it should have access to everything except cabinet confidences and solicitor-client privilege. Otherwise, he said, there had to be access.

One of the precipitating factors in having to call the Arar inquiry, which cost about \$20 million, was the fact that the commission at the time had no ability to ask the RCMP for the information, and the RCMP didn't produce it. What he recommended was to give the commission that power, the identical power that SIRC has, that the CSE commissioner has vis-à-vis this kind of information. He said that.

In this model, the commissioner can say that he has decided, with this privileged class, that they are not going to show it to you and they'll give it to some third party. Justice O'Connor specifically said you should be able to follow it, the body itself should determine what is relevant, that you don't need protracted litigation to throw it off. That has to be the way it is done.

That is not the case here. This is ignoring the recommendations entirely.

Ms. Candice Bergen: How much time do I have, Chair?

The Chair: You have three minutes.

Ms. Candice Bergen: Okay. Thank you.

Mr. Paul Kennedy: The other thing is with reference to the privilege. Justice Major, whom I talked to, was scathing in terms of his comments that the RCMP over-claimed privilege, concealed information from him, and in some case a witness who wanted to testify, they claimed they needed the information for investigative purposes which wasn't true. He was scathing in that regard. Privilege is a problem.

With regard to the time limits I was talking about, they were not necessarily the time limits for the review body to do the work, but for the RCMP, which is a partner in this process, to respond and perform. You can always have outs for things that are complex.

That's always the case. There have been protracted delays, in some cases years, for a document to come back that says, "I agree with you". It's a one-page document and there's a two-year wait for it.

Ms. Candice Bergen: Thank you very much for that clarification.

I will say that in Mr. O'Connor's report he asked for extensive investigative powers, including the power to subpoena documents, compel testimony, and allow the review body to obtain the information and evidence it considers necessary to carry out its review and investigation. This bill does provide that.

Thank you very much for your comments.

Mr. Plecas, I'm wondering if you could tell the committee very briefly, and I think I'm probably down to a minute and a half, what kind of research you do. You mentioned that under the previous process the seriousness of the offences many times were not reflected in the penalty and in the consequences. You commented that it looks like the commissioner—and I believe it—under this new legislation would have more ability to discipline.

Can you talk about what the research says and what kind of message it sends to the rest of the RCMP, and the culture, when discipline is not equal to the severity of the action?

Dr. Darryl Plecas: I would say that, again, we were in somewhat disbelief looking at what penalties had been handed down over a five-year window in some 400 different cases. In the vast majority of cases, all that happens to someone is that they're given a reprimand and counselling. In fact, if you look, that's the case regardless of the category of offence. We're talking about Criminal Code cases, integrity cases, and in most of the cases all somebody is ever getting is some kind of slap on the wrist, if you will. I think this is precisely the kind of thing that erodes public confidence in the police. It certainly isn't a good reflection on the vast majority—95% plus—of the RCMP officers. Again, it seems to be a case of dealing with bad apples in extraordinarily lenient ways. We would think the last organization that would be doing that kind of thing would be the RCMP.

● (1550)

The Chair: Thank you very much, Mr. Plecas.

We'll move back to the official opposition side.

Before we begin, we welcome Mr. Rafferty back. It's good to have you back, sir.

Mr. Garrison, please, for seven minutes.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you very much, Mr. Chair, and thanks to both the witnesses for appearing today.

I'm going to focus most of my time on Mr. Kennedy, because I think he is the person who possibly has the most experience of anyone in dealing with police complaints, in contrast to the current occupant of the position who appears to have been appointed on a temporary and part-time kind of caretaker basis by the government. I really value what you have to say about your experience.

We had officials here a week ago. We were talking about the hierarchy of investigations they proposed in the bill, which seems to push investigations down to the lowest level, in other words, down to provincial investigatory bodies or other police forces. When I specifically asked Mr. Potter from Public Safety whether this would include the federal responsibilities for the RCMP, he answered that it would. For things like national security and organized crime, he said the legislation would envision that perhaps the British Columbia Independent Investigation Office would investigate complaints in those areas. Do you have any comments on that? I was quite surprised by that answer.

Mr. Paul Kennedy: That's two of us. I didn't see that in there. I know there was going to be reference to provincial bodies with respect to criminal investigations, but it sounds redundant to have provincial bodies do complaint reviews in the areas that you just described. I don't think that is the case. If that is the case, fine.

I think what you have here is the civilian body has responsibility for complaints. The discipline thing is a federal one. If there is an allegation of a criminal activity, the criminal activity can be pushed down to the local provincial body because some of the jurisdictions, such as British Columbia, now have ones that do non-police officer investigations. They're like the SIU in Ontario. Alberta has a model as well to do criminal investigations of officers, but not to do discipline or civilian complaints.

Mr. Randall Garrison: Thank you.

I was interested in your remarks about your belief that the chair of the commission should be an officer of Parliament and have a fixed term. Can you say a little more about the advantage of that in terms of the independence of the commission?

Mr. Paul Kennedy: It's not just independence of the commission, although that's important. In the last number of years we've seen some very, I think, contentious issues for which the RCMP has been brought before parliamentary committees. There was the pension income issue, and so on.

As a lawyer, a former barrister, I felt uncomfortable watching what was happening before the committee, because it was a highly partisan environment. You can challenge that if you wish. I thought it was very difficult for witnesses to appear. Natural justice seemed to take a back seat to many issues. Counsel could attend, in that case, with the commissioner of the RCMP, but could play no role. And members were being played against each other. I found that to be very unsettling in terms of both the reputation of Parliament and the reputation of the force and the members.

Because the issue you were dealing with was important to Parliament, I would have preferred it if you could have turned to a body such as ours, at the time we had the power, and said, "Will you look at this? These are our concerns. Go off and do it in a format whereby people have rights and due process, and then produce a report that responds to the needs of parliamentary committees".

As a lawyer before a court and who is familiar with the charter, I felt very uncomfortable. To be quite candid, it looked like 16th century England in terms of how that matter was handled, and I don't think it helped anyone. I think a committee could actually help you.

The other thing is that we're dealing with a national institution. I think it's important that all members, and your constituencies, because you come from across the country, have faith that the role is being properly fulfilled and have faith in the person carrying it out.

● (1555)

Mr. Randall Garrison: I'd like to follow up on the question Ms. Bergen was asking you about privilege. If I understood you correctly, you were making a somewhat different point than her response. Yes, the new civilian review and complaints commission will have additional access to information, but what you were talking about was the ability of the RCMP to deny information.

Mr. Paul Kennedy: That's right. It's that sufferance. There's a minor category of information that says it is strictly privileged and you won't get access to it anyway. There's a solicitor-client piece, and there is a piece dealing with medical records. There are some things dealing with minutes from the commissioner of the RCMP discussing how it would interact with the commission. I have absolutely no problem with that. As a matter of fact, it mimics to some extent the protocol that exists between SIRC and CSIS, and it makes sense.

I have a problem, though, with the other one, which is a vast description of privileged information, which is actually broader than it shows here, because it brings in other sections of other statutes, which get piggybacked on. That is a provision that can be triggered by the commissioner. Then you don't get it and you don't get to see it. It goes to some third party who's appointed, who makes the decision following your observations. That decision is even binding. It's just observations. If you don't like the observations, you can go to the Federal Court to challenge them. Meanwhile, you're absolutely in the dark.

The experience of two learned justices who held inquiries was that they had to be able look and follow the trail. That's the specific language used by O'Connor. You have to look at it. He said that sometimes he didn't recognize its relevance until he saw it. His view, and it's the view I know I would submit to, is to look at it, and then you can have a discussion as to whether it's relevant. But to put the review body in the dark where it can't see it, and in the blind make a submission to get access, while a party that is not formally part of the process is making observations, does not strike me as reasonable.

You have to bear in mind that the commission's staff has top-secret clearance. There has been no adverse experience by SIRC staff or members nor CSEC staff or members. O'Connor specifically said that there's no problem giving the stuff to these folks.

I've had top-secret security clearance for about 26 or 28 years. There's no problem. You should share it and move on with it.

The Chair: Thank you very much.

We'll go to Mr. Hawn, please, for seven minutes.

Hon. Laurie Hawn (Edmonton Centre, CPC): Thank you, Mr. Chair, and thank you, witnesses, from near and far.

Mr. Plecas, you may not be equipped to answer this, but part of the whole package, at the end of the day, is going to be not just the bill but the regulations that are drafted that implement the bill.

From what you have seen of the bill and what you might think are shortcomings, do you see the regulation drafting process as a way to redress them and refine them into something that would be more effective and relevant?

Dr. Darryl Plecas: I would certainly hope so.

One of the things I'm reminded of from our review, if you can believe it, 85% of the time that there is a code of conduct case, and remember that code of conduct cases are serious, those cases are dealt with in an informal manner. What would be the process to ensure there is a proper and independent vetting of that so that cases can't be scaled down when they more properly ought to be dealt with in a formal manner?

When one considers—or at least we found—it's the entire spectrum of code of conduct cases, hopefully those regulations would be such that they would provide some assurances to any outside observer that every case is being given full consideration.

Maybe I'm missing something in the proposed changes, but I'm not sure that's happening or could happen with what's in there right now.

Hon. Laurie Hawn: Okay, I think what maybe falls under that.

You addressed the issue of other institutional changes required, in recruitment, training, and so on, which comes down at least partly to culture. You talked about wanting more clarity on penalties in relation to specific offences.

I'm thinking back to my DND experience. There was a table of offences and a table of penalties. Are you talking about that sort of thing, not to restrict, but to guide the disciplinary process?

• (1600)

Dr. Darryl Plecas: We may well be missing something here, but there doesn't seem to be a problem in terms of articulating what ought to constitute a violation. I'm not sure changes would be necessary. Again, it's the whole business of deciding on appropriate dispositions.

It's two things. First is to decide whether or not something should be dealt with in a formal manner. Second, if it turns out through the investigative process at the hearings that there has been a violation, that there is some assurance that certain kinds of penalties will be in place to reflect the seriousness of the act.

Again, if there is one thing that's glaring about cases historically it's that there has been a never-ending effort in the past to minimize the seriousness of offences through the way in which they're dealt with, and to minimize them again through the kinds of penalties that

are handed out. I don't think any reasonable outsider could look at the penalties that are awarded and think for a second that they in any way reflect what should be given as a disposition to anyone, let alone a police officer.

Hon. Laurie Hawn: At the risk of using a term that's been used in other contexts, are you suggesting something like mandatory minimums for whatever offence?

Dr. Darryl Plecas: Let me put it this way. I would say something as close to that as possible, particularly on integrity issues. For example, one could never be hired in any single police force in Canada if there were any indication of an integrity issue, so why would we have a situation, when people are found guilty of integrity issues, that they're allowed to continue in their work? Why do we look at integrity issues as being something which can be fixed, that there can be some remediation on?

That may well be for people who are outside policing, but I think every citizen has the right to expect that every single police officer is beyond reproach and that they work in an organization that is going to have a zero tolerance for that, period.

Hon. Laurie Hawn: Yes, I think most people would probably agree with that.

One of the things they're trying to do with Bill C-42 is push the disciplinary authority down to the lowest possible level, presumably to speed it up and so on.

In your reviews of this process, did you look at that at all with respect to the training required down to the detachment commander level? Whether it's a corporal or a staff sergeant, whoever is commanding the detachment and has the authority to administer discipline would presumably need some kind of training and guidance to make him or her more effective.

Dr. Darryl Plecas: At least in our assessment, the detachment commanders or unit commanders certainly don't know how to deal with the cases. The problem, it would seem to us, is that those people perhaps aren't the best people to make the decision about what ought to happen because they're so close to the individuals involved. One could argue there's no assurance to outsiders that the review of the case is going to be done in an independent fashion. There's no assurance that it won't be minimized, dealt with informally when it should better be dealt with formally.

Now, arguably, through the regulations, the commissioner can do things to help ensure that doesn't happen. I guess we would have to wait to see what those are. Having said that, I think what's happened in the last couple of years, which has not happened before, and is perhaps one of the big reasons for Mr. Kennedy's concerns, is that it hasn't been clear that there's been a level of transparency and openness on these issues that we should expect there would be. There hasn't been a culture which causes people to understand that those kinds of things—objectivity, transparency, independence—are paramount. If you don't have that, then don't even get started.

I'm assuming, given the extent to which the changes to the act capture the spirit of the need to do that, we will have a good opportunity in the next few years to see the extent to which the RCMP is able to deliver on that and the commissioner is able to develop regulations which point in that direction. Certainly everything he said recently would suggest that he's fully committed to doing that.

• (1605)

The Chair: Thank you very much, Mr. Plecas.

We'll now move to Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Mr. Chair.

Mr. Plecas, I would like to continue with you.

According to the way it's been described, how did we get to the point where a law and order organization like the RCMP is believed to be minimizing infractions of the integrity code, for example, turning the other way, or simply not being as strict as one would expect a police force to be? How did it get to this point? It is counterintuitive, as you said.

Is it that the internal disciplinary system got so bureaucratic that people would just resolve them? Perhaps they resolved them with a slap on the hand and they were not being as strict as they could be in order to stay away from the labyrinth of the disciplinary process and its appeal mechanisms.

Is that what happened? Did the internal disciplinary system become too bureaucratic and that led to things getting a little lax, or is there something else that's going on? Does it have to do with cronyism?

There has to be a structural explanation somewhere. As you said, we all know the people who go through the RCMP are the best. They meet high standards. They're well trained. They go in with high ideals and so on.

What explains the fact that the culture needs to be changed?

Dr. Darryl Plecas: You used of the word "cronyism". I'm thinking there's a little bit of truth to that. Certainly in some cases I think there's been this overwhelming desire to be remedial.

I guess there's been a failure to fully appreciate what it means to be a police officer. There's this sort of underlying level of forgiveness of their own. That probably goes back a long way with people having been able to get away with things for so long and people not getting serious consequences. I think it's problems in training where people make mistakes and ought to be given the boot right in training and aren't given the boot. It has been this way, I would say. I'm not saying it's like that right now, but I think historically there has been some level of tolerance for misbehaviour, for whatever reason. I wish I knew why, because for me it's mind-boggling that the RCMP hasn't been able to get this. In many of these things that we're talking about, if you had a chance to review these code of conduct cases, you would see that it wouldn't matter where you were working, you would be dismissed from your employment. It's not a case of—

Mr. Francis Scarpaleggia: Right. I don't mean to interrupt you but I have limited time.

My next question is related to that. Are things different in other forces? If things got lax in the RCMP, could it have something to do with the fact that for many years we didn't have CSIS?

It seems to me the RCMP was occupying the role that CSIS has now. Therefore, it probably felt it was in a privileged position to protect national security at a very high level and therefore it might have to undertake some initiatives that might not be entirely within the law. We saw that in the mid-seventies, and so on. Is it because it thought that it was not the darling of the government but that it had a very important role to play in protecting the government and our society from security threats, and that it might have to take extraordinary measures, almost covert measures, to accomplish those goals?

Do you think the fact that we didn't have CSIS at the time and that a lot of the responsibility was on the shoulders of the RCMP made the RCMP perhaps feel it had a privileged position?

• (1610)

Dr. Darryl Plecas: No, and I'm very familiar with that. To answer your question as to whether it's different in other police agencies, I would say it's certainly different in police agencies in municipal departments in British Columbia. They certainly wouldn't tolerate some of the behaviours that have been tolerated in the RCMP. I think some of the police managers in the B.C. municipal level would find it laughable. At the same time they feel hurt by it all, hurt that this is allowed to continue.

It's not like the RCMP is trying to escape something here, and that's told by the number of times they so very quickly are ready to bring people forward on some kind of disciplinary action when they do something wrong. When you look at these cases, the vast majority of them are brought to the attention of the RCMP by the RCMP themselves.

Again, I think the big issue is the matter that once somebody has done something wrong they're so quick to downplay the seriousness of it. I think that comes back to their desire to be remedial, thinking that the person could change. Again it's ironic because they certainly would never tolerate it in considering an applicant. This could be very well corrected by having a mechanism whereby certain kinds of offences are automatically treated as formal. I would say that every single integrity case, as we recommend in our report, and every single violation of the Criminal Code are serious from the get-go. Then perhaps the penalties assigned to those would be at a certain level to begin with. That's not to say it could never be fitting to give somebody a warning or something like that, but I would say in the cases that I've seen, that's not likely.

The Chair: Thank you.

I will now move to Madame Doré Lefebvre.

[*Translation*]

You have five minutes.

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Thank you, Mr. Chairman.

Mr. Plecas and Mr. Kennedy, I want to thank you for having come to share your point of view on Bill C-42 with us. We greatly appreciate it.

[English]

Dr. Darryl Plecas: Thank you.

[Translation]

Ms. Rosane Doré Lefebvre: Thank you.

Mr. Kennedy, in the bill, proposed new clause 45.74 provides that the new commission must suspend any inquiry at the request of the RCMP commissioner if that person considers that the inquiry interferes with an ongoing criminal investigation.

You have a lot of experience in this area. Honestly, are you in favour of that provision in Bill C-42, or do you think it interferes with the autonomy of the commission that is going to be created?

[English]

Mr. Paul Kennedy: Yes.

First of all, it's a contradiction in the section to have a provision that gives the chairman the ability to consider this fact situation and decide that the appropriate course of action is to suspend the hearing or process. Presumably, if the commissioner doesn't like the ruling, in other words, if the chairman of the commission decides it should proceed, the chairman could be overruled by a letter from the commissioner saying that it's going to interfere and therefore it shall stop. This significantly erodes the credibility and independence of that commission.

Certainly during the four-plus years that I was chair, cases of that nature came up. Bear in mind that indictable offences, which are serious offences, have no statutory limitation period. That's why you hear about the famous cold case files that will sit around forever, and in 15 or 20 years, they're opened up.

I had cases that came up with a complaint dealing with this kind of issue, dealing with the professionalism and so on of the investigation that was being conducted, which didn't terminate in the sense of finding anyone who was being charged, and so on, and yet the police were professing that it was an ongoing investigation. It was ongoing in the sense that, yes, technically you never closed it, but that doesn't mean that if you have it and you haven't found anyone, no one can look at your investigative activities.

As well, we had issues where something would be tangential to what we were looking at. We had a complaint dealing with particular activities. I think it dealt with a failure by the RCMP to warn the community that there was a chap in the halfway house who had a propensity to attack people and commit murder and mayhem. That was the issue. They came back to me and said they were still looking for the person who did this dastardly deed. Therefore, it was an ongoing investigation.

No, thank you.

The issues are how you behaved here and the failure to provide notice. It's a provision that can be subject to mischief in terms of its scope. I've clearly had cases where I have looked at it and said, no, that there's an ongoing coroner's inquest, criminal investigation, or

criminal trial, for instance, and we'll suspend our proceedings until those activities are resolved, and we do it.

I'd like someone to point out where there has been inappropriate response by the commission. When I looked at the tasing of the Polish gentleman in B.C., clearly there was an investigation, part criminal and part coroner's inquest. It was hard to sort out. I held off until that was concluded. Prudent judgment had markedly not been exercised. If you want to have credibility, the provision whereby the commissioner gets to send his letter over and stop it should be deleted. Otherwise, you're going to have a commission that has zero credibility.

It's been undermined in terms of access to information, and undermined in that context as well.

• (1615)

[Translation]

Ms. Rosane Doré Lefebvre: You mentioned in your presentation that this caused a credibility problem. The culture of the RCMP is already being questioned by the population in general. The population has a certain lack of confidence in it.

[English]

Mr. Paul Kennedy: There are provisions for review bodies that don't exist in any other legislation. Why the government spent all the money it did on the Air India inquiry, the Brown task force, and the O'Connor inquiry, to then ignore their recommendations is beyond me. It's a step backward. The only thing that is a step forward here is, until about 2004, the RCMP could actually conceal from the commission that it had information by not disclosing to them that it had it. They would just look at it, assume it was privileged, and they would never even tell you they had it.

A court case requires them at least to tell them there is a case here, that it's classified, that it's privileged, and they're not going to give it to you. At least you knew you were being denied something. Until 2004, the commission that had been established didn't even know that information was being withheld from it. This is intolerable. It's easy enough to put in a provision, and you have access. You have a regime whereby the RCMP says that is classified, it's privileged under the Security of Information Act, that when you release your report, don't disclose that information.

Public disclosure is different from the review body when it's doing its investigation, making its findings, and making its recommendations. It's fully informed as to what it's dealing with.

The Chair: Thank you.

We'll move to Ms. Bergen, please.

Ms. Candice Bergen: Thank you very much, Mr. Chair.

I need to clarify a couple of things for the record.

Many of the recommendations in Mr. O'Connor's report are in Bill C-42, and I'm reading from the bill:

45.39 (1) Subject to sections 45.4 and 45.42, the Commission is entitled to have access to any information under the control, or in the possession, of the Force that the Commission considers is relevant to the exercise of its powers, or the performance of its duties and functions, under Parts VI and VII.

We move along to where it says:

45.4 (1) In this section and sections 45.41 to 45.48, "privileged information" means information that is subject to...

It lists client-lawyer privilege, the witness protection program, the security of Canadians, and then medical information. Even if that is deemed to be privileged, that decision would then go to:

...a former judge of a superior court of a province or the Federal Court or an individual who is a member of a prescribed category of individuals to review the information and make observations to the Commission and the Commissioner.

I do understand, Mr. Kennedy, that you think the commission should have complete unfettered access at all times to all the information. There is some protection for all Canadians, that they are innocent until proven guilty. There is some protection for Canadians regarding privileged information.

With regard to when investigations that the commission would be looking at when they cross over to criminal investigations, it would appear that you would agree they should be suspended. You're just saying that you believe the commission should have the ability to say that, and the commissioner should have no ability to say that. I guess, under this bill, it would also give the commissioner of the RCMP the ability to say, "This is a criminal investigation. We're going to move it now to...". If it's a serious incident, there are several processes to set up, whereby there will be investigations.

I think that we are in agreement that with the spirit and intent of this new bill—and Mr. Plecas, I'll come to you as well—we are moving forward with some much-needed changes to the RCMP. We're giving the commission many more powers, tremendous powers that they've not had before, as well as the commissioner, the ability to do his or her job.

Mr. Plecas, you said things like, the desire to be remedial is so strong, that there's a high level of tolerance for misbehaviour. When you look at modernizing the disciplinary processes whereby the RCMP right now are able to discipline complaints of lesser seriousness, do you think that with the ability to deal with things at a less serious level, it will send the message? It's like the broken window analogy, where you deal with things immediately and you deal with things, sometimes with education, sometimes with mediation, sometimes with discipline. Will it send a signal. Do you think your research shows that there would be an effect? Would members see that accountability is now required under this new act?

• (1620)

Dr. Darryl Plecas: Personally, I think one important thing is that the proposed changes to the act are a godsend. There's no question this is helpful, and the committee, the government, and the RCMP are all to be commended on having brought this about—the idea of changes—so quickly.

One of the things we would want to have in mind is to look at what falls under the umbrella of code of conduct cases. We're not talking about things where the average person would say that it's a relatively minor kind of thing between an employer and employee. Probably one-third of them would fit into that category.

Of course, wherever it's possible to do things like restorative justice, mediation, deal with things generally and outside of police, in the least intrusive manner possible, that is wonderful. But I think when it comes to a police officer who has been found doing a

criminal act, an integrity issue like turning information over to organized crime, I don't even want to hear that it's been dealt with on an informal basis.

Unfortunately, some of the things we're talking about here are in every sense of the word very, very serious acts. At the end of the day, historically these cases have been dealt with informally and in a very lenient manner. That needs to change. I think it needs to change for the benefit of all officers.

I think the changes will certainly have an impact on every single officer. I think every single officer out there at least ought to know, be on high alert, that some of the things that used to be tolerated in the past won't be tolerated in the future.

I know it doesn't sound very forgiving, but I think we have to say to every single police officer, inside and outside the RCMP, "Forget it. If you commit criminal acts, you lack integrity, you will be held accountable, and you will be dealt with in a very severe manner."

• (1625)

The Chair: Thank you, Mr. Plecas.

We'll go to Mr. Garrison please.

Mr. Randall Garrison: Thank you very much.

I want to go back to Mr. Kennedy and ask about the restrictions on the ability of the commission to commence investigations on its own initiative. In proposed subsection 45.34(2), it says that the commissioner shall be satisfied that he has sufficient resources and that no other entity is already investigating.

Do you find these to be necessary restrictions, or are these restrictions that would impact on the independence of the commission in a negative way?

Mr. Paul Kennedy: It certainly doesn't put a lot of confidence in the ability of the commission to manage its workload. The matter that captures my attention and that is important, for instance, is what I would call a chair-initiated investigation.

I'll give you an example. I get a taser complaint, and I make a ruling on it and share it with the commissioner. I get another taser complaint and it's the same thing. I get another one and it's the same thing. There would never be a response. I would say, wait a second, all these tasings are indicative of maybe a bigger problem. I would launch a chair-initiated complaint and I'd look at a broader range and ask what is actually going on across the country.

That's what I did with the tasing file. That's what I did with the issue of whether or not the police could investigate the police. Instead of dealing with one-offs, it's like a squeaky wheel. These little complaints are squeaky, and they tell you there's something out there.

Instead of dealing with 20 of these each year, it's actually more cost-effective to go in and do it properly, do a proper analysis, a comparison of what's going on in other countries, and then come out and do it. We changed the behaviour of the RCMP vis-à-vis tasing, which was hard to get done. Obviously the Dziekanski affair helped to bring that to the public's eye.

But follow up each year to find out how they are using it. If we hadn't done it, we wouldn't have known that 13-year-olds who were joyriding were being tasered. These were not usual situations. They popped up fairly often. Once you do that, you can start finding where the actual problem is. If you let someone manage an organization effectively, you get a better result.

The other one is asking, what do you mean by no other entity investigating. You have a national police force. What are you saying? Are you saying that someone has an inquiry dealing with a similar issue in one of the provinces and therefore you don't do something?

Well, I can tell you, when it came to tasing, as an example, there were a series of inquiries. Not only that, across the country each jurisdiction had its own policy. If you looked at different police forces, they were all different.

Are you going to sit back and say, wait a second, what is the RCMP as an institution doing? It should be what do we recommend that it adopt as a standard across the country that it, as a force, should do? Otherwise, you're going to have this force that is absolutely dysfunctional, with different models across the area.

By the way, when I did that, I frequently shared my product with my provincial counterparts, who didn't have the financial resources to do it. We would meet each year, and I would share that product with them. They were extremely grateful for that.

Let the organization manage itself properly, and you'll get a better product, and the RCMP will be a better service.

Mr. Randall Garrison: In your initial presentation you laid out what you saw as four deficiencies in the act. We've heard Ms. Bergen on the good intentions of the government. Do you believe that these deficiencies actually undo those good intentions as far as the credibility of the commission is concerned?

Mr. Paul Kennedy: At one time I said facetiously, but maybe colourfully too, so you're allowed to smile if I say it, that this looks like the model of the horse that has decided what saddle it wants to wear. In this case, the RCMP is the horse. This is very user-friendly for the RCMP, but it is not credible vis-à-vis the public. If you want to have something that is modern and effective, you have to look at what has credibility with the public.

If you have an independent, credible body doing things in a responsible fashion, and you're concerned about whether you can trust it, then appoint someone competent to run it who knows the area. Then you'll get good product. They will get good service. You'll be able to achieve the goal they talked about in the task force, which is to maintain and restore the public's confidence in the RCMP. This undermines it.

One of your colleagues talked about the two provisions in the proposed section shown on page 40 and 44. One provision is an absolute privilege. It talks about lawyer privilege. The lawyer privilege is between the member and his lawyer. If you look at the privilege part, in proposed paragraph 45.4(1)(a), it says "exists between legal counsel and their client".

The client could be the RCMP. That would mean when an officer sits down with a police officer to discuss laying charges and what he

or she should do, conversations would take place. You can claim legal privilege on that. It's different from the privilege between a member being charged and his need for it.

I can tell you that we would not have been able to do the Kingsclear case, which was a series of rapes of young boys in an orphanage that went on for 20 years and the failure to follow up on it, without the ability to find the discussions that took place between the crown and the RCMP to point out what the failures were.

These provisions undermine entirely the ability of this body to do its work.

• (1630)

The Chair: Thank you very much, Mr. Kennedy.

Our time in this first hour has come to a close.

We want to thank both of you, Mr. Plecas and Mr. Kennedy, for your submissions today, and for your attendance via video conference and your presence.

We're going to suspend for about one minute to allow Mr. Kennedy to make his exit and to invite our other guests to take their place.

In our second hour, we're going to continue our consideration of Bill C-42, An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts. We're hearing from the Royal Canadian Mounted Police today.

We have Chief Superintendent Craig MacMillan, who returns with a little different hat today as the director general of adjudicative services. We also have Alain Jolicoeur, chair of the audit committee.

I would invite each of you to make a brief opening statement, and then we'll proceed with a round of questioning by members of the committee.

Mr. Jolicoeur.

Mr. Alain Jolicoeur (Chair, Audit Committee, Royal Canadian Mounted Police): I would like to thank you for the opportunity to answer your questions. I do not have an opening statement.

The Chair: All right, that's fair.

C/Supt Craig MacMillan (Director General, Adjudicative Services, Royal Canadian Mounted Police): There is no opening statement for me, Mr. Chair.

The Chair: We'll move right into our first round of questioning.

Mr. MacMillan has appeared at a different time.

We'll go to Ms. Bergen, please.

Ms. Candice Bergen: I'll split my time with Mr. Norlock.

Mr. MacMillan, can you please tell us what it is you do and what services you provide to the RCMP and its members? What exactly is your role?

C/Supt Craig MacMillan: I'm the director general of the adjudicative services branch, which is comprised of four directorates. The first is the discipline adjudicators directorate where we have four full-time adjudicators who deal with discipline cases and they have a support staff in the form of a registrar and some clerical assistance and editing.

The other directorate is the appropriate officers representative directorate. Essentially it is the equivalent of what we would call prosecutors, I guess. They handle the presentation of formal discipline cases on behalf of the appropriate officer who is typically the commanding officer of a division. There is also the member representative directorate, which is essentially comprised of defence counsel who are acting on behalf of members who have been alleged to have engaged in misconduct that has led to formal proceedings being instituted against them. Then, as an aside, there is the grievance adjudications directorate, which has the grievance adjudicators assigned to it who deal with level one and some level two grievance adjudications.

My role as director—and this flows partly out of reports that have come in to the Pay Council, also known as the Lordon report. There was a desire to start to decentralize some aspects of the adjudicative services process, or the discipline process, and at the same time leave other components at the front end. This is attempting to build a framework. Obviously, conflicting interests are involved with defence, the crown, and the adjudicators or decision-makers. My role essentially is to coordinate those activities, bearing in mind the conflicts of interest that arise among these different groups and deal with budget matters and other general issues dealing with delivery of the services in that context.

We're national. We have offices in different areas of the country, in all the directorates.

• (1635)

Ms. Candice Bergen: Thank you very much.

Mr. Jolicoeur, could you tell us as well what you do and what your role is, please?

Mr. Alain Jolicoeur: Yes, I chair the external independent audit committee of the RCMP. Three people are on the audit committee. We were appointed by Treasury Board ministers. We oversee the work of the internal audit of the RCMP in the different operational areas. We publish audit reports. We report on an annual basis on how the RCMP meets its commitment vis-à-vis values and ethics, control framework, and risk. We also report to Parliament. We make an annual report to the comptroller general and the commissioner and publish our findings every year.

Ms. Candice Bergen: Thank you very much.

Mr. MacMillan, before I turn the rest of my time over to Mr. Norlock, could you comment on a couple of things? I'm not sure if you were here for Mr. Kennedy's testimony with regard to the new civilian review and complaints commission. Could you comment on some of his opinions, and if you agree or disagree?

Perhaps you could also tell us from where you are and what you have seen in terms of dealing with RCMP discipline, with member discipline, and the adjudication services, if Bill C-42 will help and

will have a positive effect on the RCMP as well as Canadians' trust in them.

C/Supt Craig MacMillan: I will start with the first part of your question, which is on the CRCC.

It may be a point of clarification, but the authority or the ability of the commissioner to request that public complaint review investigations be suspended where it would compromise a criminal investigation is clearly to understand it's not a request that terminates the public complaint process. It merely suspends it at that point.

I did see that point was made by Mr. Kennedy that it terminated the process. I'm not sure if that's exactly what he meant, but I wanted to clarify that component of it.

In terms of privileged information, as I understand the construct, I didn't prepare as much for the CRCC component as I did for the discipline conduct component. In essence there is a recognition that two types of privileged information would not be accessible by the commission. The first component is privileged communications between the member and his or her counsel. That's where the member is in some kind of difficulty. The member has retained a lawyer through the legal systems process, or has a lawyer and they're having communications about advice on how to respond to the situation. That would not be accessible by the CRCC. The second component is strictly in relation to the advice the RCMP is receiving from legal counsel, likely the Department of Justice, on how it responds or is dealing with a complaint involving the CRCC.

I can't state categorically, but I would not see that necessarily extending to communications with crown counsel, as was proposed. I might stand to be corrected on that, but there is going to be a separate issue about that, because crown counsel is providing the advice, so a provincial agency is providing advice to the RCMP in that operational context.

My colleague has also pointed out to me that it's legal opinions relating to the way in which the force should conduct itself with regard to the commission specifically, and the minutes of meetings held by the force relating to the way in which the force should conduct itself with regard to the commission. Those, I would suggest, are very limited circumstances in which there wouldn't be access.

Otherwise, there's generally a presumption of access to other information, including privileged information. The point I would make is that informer privilege is not necessarily residing in the RCMP or the Government of Canada to waive. Informer privilege exists with the informer. There has to be some context taken into account on how to resolve disagreements that may arise over disclosure of that information.

I take the point it shouldn't be protracted. In the regime that's been set up here, the RCMP is required to state the nature of the information which it's saying it's not disclosing as part of that third party review process. It's not just that they're saying they have information and they're not giving it. It's required to explain to the commission the nature of the information over which the claim is being made not to disclose.

It's part of creating a way to resolve that without having to go to the courts, as has happened in the past. It's proposed that a retired judge can be appointed to make observations about that. There is also a requirement that there be a memorandum of understanding in terms of how the RCMP and CRCC are going to reply to issues over access to information.

I think it's fairly strong in that regard.

•(1640)

The Chair: We have to leave it there.

We'll go to Madame Doré Lefebvre for seven minutes.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

Mr. Jolicoeur and Mr. MacMillan, thank you for being here today.

Mr. Jolicoeur, can you provide us with more detail on what you do? I noted two or three things concerning values and ethics, but I would like you to be more explicit. Do you produce reports on an annual basis?

Mr. Alain Jolicoeur: Yes. The role of the external audit committee is to ensure that all of the studies and internal audit reports produced by the Royal Canadian Mounted Police comply with the applicable standards. We must also ensure that we have a risk-focused audit plan in place for the next few years. We use audit resources to examine areas where the likelihood of finding problems or aspects to be improved is the highest. We also ensure that the process is transparent and that the results are published.

We have, in addition, more general responsibilities, for instance concerning the annual report, in particular with regard to the Commissioner and the Comptroller General of Canada. We must prepare reports on an annual basis on the following topics: values and ethics, and how they are managed within the Royal Canadian Mounted Police; operational and internal risk management; the framework used for financial audits and the monitoring that is done; and finally, we audit reports submitted to Parliament in order to ensure the validity of information.

Ms. Rosane Doré Lefebvre: And there are only three of you to do all of that work.

Mr. Alain Jolicoeur: There are three of us, but the analytical work that supports our reports is done by the Royal Canadian Mounted Police internal audit group.

Ms. Rosane Doré Lefebvre: So your organization is not an independent group that monitors what goes on and prepares reports. You call on the services of RCMP analysts.

Mr. Alain Jolicoeur: In fact, we review the work done by those analysts and we ensure that their conclusions are correct.

Ms. Rosane Doré Lefebvre: You review what they have done.

Mr. Alain Jolicoeur: Correct. We also have to review management action plans following problems that we note, or problems that are raised by the Auditor General. We discuss those action plans and review them, positively or negatively. We want to know if they duly take into account the problems that were raised and if they will help to resolve them.

Ms. Rosane Doré Lefebvre: What were the most important problems underscored in your last report?

Mr. Alain Jolicoeur: There were several, in various programs. This is the same as in any other organization. With regard to the organization as a whole, we have found over the years that the management of human resources is one aspect that is a bit more awkward and where there is room for improvement.

•(1645)

Ms. Rosane Doré Lefebvre: What type of improvement do you think should be made in that respect?

Mr. Alain Jolicoeur: In fact, I am here to answer questions concerning the bill. It constitutes a recipe for solving a good number of these problems. In the area of labour relations, one of the important risks is related to the perception of the RCMP by the general public. If negative perception is an issue, it becomes much harder for the organization to do its work.

It seemed to us that the current labour relations management regime and behaviour issues management plan was weak, which caused an additional risk for the organization. What is being proposed will reduce the risks considerably.

Ms. Rosane Doré Lefebvre: You talked about the perception of the RCMP by the population, in connection with human resources. Bill C-42 would help to improve the perception...

Mr. Alain Jolicoeur: In my opinion, it will reassure Canadians, as they will know that there are mechanisms within the organization to deal with behaviour problems.

Ms. Rosane Doré Lefebvre: This will be done mainly by giving the commissioner greater powers. As Mr. Kennedy mentioned earlier, the commissioner may suspend inquiries. Witnesses told us last week that the internal commission could only issue recommendations and that the commissioner would be free to follow them or not, without necessarily taking any further action.

Do you not think that these minor details could stand in the way of restoring the confidence the RCMP deserves?

Mr. Alain Jolicoeur: Is the bill perfect? Will it solve all of the problems in the RCMP? No, I don't think so. However, I think it constitutes a major improvement.

With regard to the decision-making powers given to the commissioner, I have worked in the federal system for several years and I was able to compare the responsibilities of deputy ministers—I was in fact one myself for several years—to those of the commissioner. I also took part in creating agencies or separate employers such as the Canada Revenue Agency.

It seems to me that the balance being proposed here is easy enough to defend. In the context of the bill, the responsibilities of the commissioner seem to be close to the responsibilities and powers of deputy ministers and their counterparts in other organizations. So I am quite comfortable with that.

Ms. Rosane Doré Lefebvre: Thank you very much.

[*English*]

The Chair: Thank you very much, Mr. Jolicoeur.

We'll go back to Mr. Norlock again. I think you were part of the last round, but we'll give you a chance to question again.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair, and through you to the witnesses, thank you for appearing.

Mr. Jolicoeur, if I could continue in the same vein as my friend across the way, you mentioned that one of your audit duties is to look at values and ethics. I gather that when you look at values and ethics, you look at the efficacy of the findings during hearings concerning the code of conduct. In other words, when there's a breach of the code of conduct, you would look at that, and you would evaluate whether it met the policy and procedure that's set out.

Mr. Alain Jolicoeur: At a high level the audit committee would not involve itself in a transaction or a specific case, but it would want to ensure there were mechanisms in place to deal with each one of the problems.

• (1650)

Mr. Rick Norlock: Okay. You heard the opinion of Mr. Kennedy that some of the misconduct or some of the ethics breaches were dealt with—I don't want to use my own words—in a less than effective manner. Would part of the audit identify something like that?

Mr. Alain Jolicoeur: The audit is limited to ensuring that the laws, policies, and directives in place are abided by when these cases are resolved. One of the concerns raised in committee was that some components of that system of directives, regulations, etc. were such that it was very difficult. Some cases certainly on an anecdotal basis were not resolved as Canadians would have expected them to be resolved.

Mr. Rick Norlock: Thank you.

Once your report is finished, would it go back to the RCMP, to the adjudicators, who would look at the findings with a view to being more in line with what you believe Canadians would expect?

Mr. Alain Jolicoeur: Our reports are made public. For us, the tool to ensure that the organization is moving forward in the right direction is transparency. We also make additional recommendations, as I said, on a yearly basis, to the commissioner and the comptroller general, if we feel that there is a specific problem somewhere that doesn't appear to be getting resolved. We make that point. But we don't have any management responsibility or any decision-making responsibility. We judge the organization on its action plans and its implementation of those action plans for each of our concerns.

Mr. Rick Norlock: Thank you very much.

Chief Superintendent, you've heard my line of questioning, and you heard Mr. Kennedy's opinion on breaches of ethics. As a director, how would you respond to Canadians as a result of that? If there were findings that inappropriate findings were occurring, would you sit with your fellow adjudicators, or, as you are director, direct them to be more in line with the expectations of Canadians? Has that taken place?

C/Supt Craig MacMillan: I will answer your question in two parts.

There is some sensitivity around the role of adjudicator. As it's set up under the current act, it's a quasi-judicial role. Rolling in and

saying that they have it all wrong, that they have to do everything differently from now on, and this is how they're going to judge those cases isn't quite how it unfolds.

What I currently do is read each formal decision that comes out—I'm only talking about formal decisions; I'm not talking about informal decisions—as part of examining the case and the direction in which it was going. A range of sanctions are usually available, so you can know whether it's within the expected range of sanctions.

We publish an annual report, which includes all the formal discipline cases that have been adjudicated and the sanctions that were imposed. We're in our fourth year. That's made available to the minister. It's available on our website, so it can be accessed by external parties.

That's part of the process we go through in showing what dispositions we've been imposing for certain sanctions.

There are going to be disagreements over certain cases. I can't speak to Mr. Plecas's report. I've read the report, but I don't have the substance of the specific cases he's talking about.

My general sense is that we don't have integrity cases that aren't being dealt with seriously. But if there's a structural issue why we're not seeing more cases in the formal process, it's probably for some of the reasons that were discussed. The minute you put it into that formal process, and as I stated before, you're talking months and years, there might be some inclination to try to deal with it, to get the member back to work. It's not a career-ending thing that's happened.

Bill C-42 would get rid of that bottleneck. Right now if it's more than a reprimand, you're into a formal hearing. Now your local line officer should be able to deal with it.

I understand the point about objectivity and independence of the local decision-making, but that's inconsistent with the trend in reforms and policing generally to try to have your appropriate managers deal with it. We will build in checks and balances so it isn't a matter of “my best friend” or “I don't like that guy or gal” that's going to be taking effect. We'll have checks in there to make sure Canadians know an appropriate sanction was considered or applied.

Another minor but important element is that in a public complaint context, Bill C-42 would permit the RCMP to disclose to the public complainant the measures or discipline that will have been opposed. That's a historical issue that has caused us some difficulty. Now they can be formally told this is what happened as a result of their complaint.

• (1655)

The Chair: Thank you very much, Mr. MacMillan and Mr. Norlock.

We'll now move to Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia: To follow up on that point, Mr. MacMillan, up until now, when somebody lodged a complaint and there was a follow-up and someone was sanctioned, we never knew where it went. Did it go down the rabbit hole?

C/Supt Craig MacMillan: It evolved. Initially there wasn't an inclination to advise what the result was. It's moved to where now we say that measures or discipline have been imposed.

If it's a formal hearing that will be publicly known because it's a public process. If it's an informal measure, right now we will say something has been imposed but we won't say specifically what.

The bill would permit us to say what was imposed in relation to the specific complaint.

Mr. Francis Scarpaleggia: You weren't permitted before.

C/Supt Craig MacMillan: It was a contest between private and personal information and the Access to Information Act and Privacy Act. The view was that you couldn't disclose that, but now we would be permitted to do that under the bill.

Mr. Francis Scarpaleggia: You concurred with Mr. Plecas, who said that the sanctions meted out are just not adequate, that they're too soft. You agree that the process of internal discipline is extremely bureaucratic. Do you have any thoughts on how it came to be that way, or is that an inappropriate question to ask you in your position? Do you have any thoughts on that? How long have you been in the RCMP?

C/Supt Craig MacMillan: Twenty-six years.

Mr. Francis Scarpaleggia: Was it always like that, from the day you got there, or did it more or less grow like a vine on the side of a building, and it just got bigger and bigger and more complex?

C/Supt Craig MacMillan: I wouldn't say that I necessarily agreed with the findings of Mr. Plecas. I don't know the details of the cases he talked about, and he used some very strong descriptions of what he had found. I'm not going to disagree with what he said.

Mr. Francis Scarpaleggia: No, but you agree that it's too cumbersome.

C/Supt Craig MacMillan: I definitely agree it's too cumbersome, but we're in that catch-22 where we want to have any serious integrity issue dealt with formally. When you start talking that language in our current process, it would just come to a halt. It's not moving that fast right now, but if you're saying every integrity issue has to go into a formal hearing....

Under Bill C-42 we have the ability to have increased levels of sanctions imposed at a lower level, so we should have more flexibility with that.

I have seen discipline ebb and flow to a certain degree. I'm not an expert, but I would say that to some degree it's a reflection of social views as well.

For example, impaired driving or shoplifting at one time were considered to result in automatic firing. It's not considered to be that way anymore. There are mitigating factors. But in the case of shoplifting, I do see us moving back in the direction where it could result in termination.

Mr. Francis Scarpaleggia: Are you telling me that at the moment if an RCMP officer shoplifts it is not an automatic termination?

C/Supt Craig MacMillan: There are factors to be taken into account in the individual case but it's not necessarily automatic termination. It was when I started on the job, but medical evidence has become more and more predominant in the processes and in what happens.

We recently had a case of a senior NCO who was dismissed as a result of a shoplifting case. When you get into intent and what was evolving, PTSD, post-traumatic stress disorder, there are factors coming in. As a profession, policing needs to do a better job in general on how we respond to misconduct. I was surprised when I looked into it. In one major department on the west coast, impaired driving can get you a reprimand. In another department, maybe in central Canada, it can get you suspended for 45 days, and it might get you demoted. In the RCMP it's going to average seven to 10 days' suspension without pay.

Policing in itself does not necessarily have an agreed-upon approach to specific types of sanctions.

One of the comments I would make is when you talk about integrity, assuming we have common ground on exactly what's captured by that term, yes, it's serious, and yes, it should be dealt with in a serious way, but whether that would necessarily mean a formal process in every instance, under Bill C-42 that would mean a dismissal case.

We would have everything available under dismissal, which we don't have now, to be dealt with at the most appropriate level. When I hear about independence and objectivity the difficulty is that you've got to balance those things. You can't have something completely independent, because when you introduce that, you're taking it way far away from where the person has personal knowledge and understanding. I get the objectivity component. You want to make sure there's a check there to make sure appropriate sanctions are being imposed.

• (1700)

Mr. Francis Scarpaleggia: Does Bill C-42 create that balance, in your opinion?

C/Supt Craig MacMillan: When Mr. Townsend, the staff relations representative, was here, he pointed to proposed section 36.2. We think that's a fairly significant advancement because it's stating the principles that will apply to sanctioning misconduct in the RCMP. That doesn't exist. Other jurisdictions will have statements about what is aggravating or mitigating. It's a pretty significant statement, because stakeholders will now know that it is not punishment necessarily, that it's remedial, corrective, and educative where appropriate. When you state that's Parliament's intention, I think it's pretty significant that you have to find a balance in where you are working it out. People are going to disagree about sanctioning and misconduct.

I think that's a fairly significant step. It gives some assurance to stakeholders that there will be a balanced approach because the staff relations program would be concerned about notions that immediately things should be moved into a formal process because they fall into a certain category.

Mr. Francis Scarpaleggia: Right. This will make a distinction: if it's this, it gets dealt with immediately in this way; or if it's that, it maybe goes to a different—

C/Supt Craig MacMillan: I don't anticipate mandatory minimums, but I could be wrong because it is a consultative process. We will look at things like that.

I think you do naturally, as in DND or the FBI where you can start looking at sanctions. We do it slightly differently. We don't have a fixed table but we informally do because we know, for example, that impaired driving is going to get you seven to 10 days but with aggravating and mitigating factors you can build in those things and create them so your managers know that in this circumstance—

Mr. Francis Scarpaleggia: Could they have been built in as a matter of an internal RCMP process, or do you always need enabling legislation with accompanying regulations to have that kind of clarity?

C/Supt Craig MacMillan: Right now it's enshrined in the act. If you want to give informal discipline, it's in the act and you can't change that. If you want to give formal discipline it's in the act.

What this permits, through a commissioner's standing order, is to have measures set out that are more flexible and adaptable. Do you necessarily have to have it set out specifically? No, because there are other regimes that don't have wide rules around it. There are cultures in policing that we've been discussing, particularly policing in relation to management and the employees. These are the two cultures of policing. I think part of what you heard from the SRRs, the staff relations reps, is our need to continue to have trust in them but ensuring that the members understand it's going to be a balanced and fair process for them as well as for Canadians who are going to be concerned.

The Chair: Thank you very much, Mr. MacMillan.

We will now move to Mr. Rousseau.

[*Translation*]

Mr. Rousseau, you have five minutes.

Mr. Jean Rousseau (Compton—Stanstead, NDP): Thank you, Mr. Chair.

I would like to start with Mr. MacMillan.

Should the amendments to the act proposed in Bill C-42 be adopted, are the provisions of the RCMP Code of Conduct sufficient to make the management of complaints more transparent?

[*English*]

C/Supt Craig MacMillan: Do you mean the future code of conduct?

Mr. Jean Rousseau: Yes.

C/Supt Craig MacMillan: There's an ability to create a code of conduct under a regulation. Its approach would be to ensure that conduct is being dealt with at the appropriate level, but it won't say

that in the code of conduct. It's going to set out the standards of behaviour. We would propose and in consultations with the stakeholders that.... Right now I'm going to estimate it is 30 or 40 sections long. It's very legalistic. It's in a regulation. We would still have the measures in a CSO. We're going to have a code of conduct in regulation but it's going to look more like a code of ethics. It is a modernization move. Rather than saying "though shalt not" with a series of things you can't do, it's going to say that members will conduct themselves properly, that they will treat people with respect, that they will treat everyone equally.

[*Translation*]

Mr. Jean Rousseau: My next question is for Mr. Jolicoeur. Perhaps I will come back to you afterwards, Mr. MacMillan.

Mr. Jolicoeur, I would like to talk about gender equality within the RCMP, where harassment cases did in fact lead to the creation of Bill C-42. Tell me not only how this bill will correct the perception that people now have of the culture within the RCMP, but also how the work environment needs to change attitudes within that police force. At first blush, there is no incentive, for example, to have women promoted to higher levels. And yet, that could have had a direct impact on the culture. Once again, regarding promotions and things of that nature, all discretionary power is being left in the hands of the commissioner or Treasury Board

What is your opinion on that, Mr. Jolicoeur?

● (1705)

Mr. Alain Jolicoeur: The bill does not explicitly discuss one problem or another. It is a way of giving means and tools to management that will allow it to solve a whole series of problems, including the ones you just raised. No part of the bill covers one problem or another explicitly.

Mr. Jean Rousseau: But should it not do so? After all, it is in fact that issue that forced the drafting of Bill C-42. People want to change the culture, they want to establish some kind of ethics, a code of conduct thanks to which there will be fewer problems of that type in future.

Mr. Alain Jolicoeur: I agree with you. That was well-documented: there is an internal culture problem, and a big one, that needs to be changed. However, I don't see why it should explicitly be addressed in the bill itself. It might be relevant in a particular context, but here again, I don't see why we would do that. The important thing is that we are providing the organization with the necessary tools to solve those problems in a more convincing way.

Mr. Jean Rousseau: I remain skeptical. When it comes to managing human resources, how will there be a balance between the discretionary power of the commissioner and that of Treasury Board? For instance, it says that "Treasury Board may determine categories of members in the exercise of its human resources management responsibilities". As for the commissioner, "the commissioner shall establish an informal conflict management system and inform the members of its availability".

Do all of these elements not conflict with one another?

Mr. Alain Jolicoeur: No, I don't think so. It depends how you define those categories.

We must remember that the federal public service employer is Treasury Board. We must also remember that some of the employees of the Royal Canadian Mounted Police are employees of Treasury Board.

I am not sure I completely follow your comments.

[*English*]

The Chair: Thank you.

Thank you very much, Monsieur Rousseau.

We'll now move to Mr. Leef, please.

Mr. Ryan Leef (Yukon, CPC): Thank you, Mr. Chair.

Thank you again, Mr. MacMillan, for attending.

Mr. Jolicoeur, it's good to meet you.

I want to talk about Mr. Plecas' comments in respect to the discipline aspect. One great thing about being human is that we're fallible, but he didn't seem to extend that courtesy to the RCMP. I'm sure that at times we experience that ourselves as members of Parliament, in that we're expected to be beyond reproach and absolutely perfect.

I don't think anybody has been clearer than the commissioner about wanting to deal with challenges within the organization, about not tolerating breaches of conduct and breaches of the law, and about being able to deal with that in a fair and efficient manner. With his support, and certainly some positive comments that we did hear from staff relations about this, I think we're going in the right direction with this piece of legislation.

I think I mentioned this when the staff relations people were here testifying, but confidence in the legislation and in the disciplinary process goes two ways. We have that eternal debate between police and public safety, in that public safety is paramount to the police, but if the police aren't safe, then the public isn't safe, and therefore police safety is actually more important. You can go back and forth all day long on that topic.

In this body of legislation, it's imperative that members of the force have confidence in the discipline process that will be applied to them, just as the public would have confidence in the force applying that legislation. Would you agree, and Mr. Plecas said it himself, given that they hold the RCMP to a higher standard? He's not sure why the RCMP would look at remediation.

What I think he didn't point out, and maybe I can get your comments on this, is that in what we, as Canadians, ask of the Royal Canadian Mounted Police in their service to Canadians, there's one thing that is a lot different from what we ask of any other law enforcement agency in this country. We ask them to serve in rural and remote regions in this country, often alone or in small detachments where they're serving for months on end. We ask them to deal with everything from very basic front line service delivery to the most extreme cases, whereas other places would have major crime units or other things to deal with it. That exposes them to a

tremendous workload, a tremendous amount of community pressure, and a tremendous amount of stress. Their lives, at different times, become more of a bubble in those communities, in that there they are the living face of the RCMP.

From that point of view, given the reality that we ask more of them and expect more of them, do you think it's appropriate and sensible to have the commissioner at times being the decision-maker about discipline and being able to have a different view and a different level of input on the disciplinary process, which might be encumbered if we gave absolute and complete control to the complaints commission?

• (1710)

C/Supt Craig MacMillan: I agree with that comment from the perspective that I've worked in British Columbia as counsel representing municipal police officers, and they have the same issues that the RCMP has. I wouldn't have such a bright line to say that they respond to their internal cases much differently than the RCMP does, based on my experience in that context, which is a little dated. It's seven to eight years ago now, but I have functioned in that environment that we're talking about.

I think a fair argument can be made that having the commissioner or the CEO of a public agency in the context of policing, which is different from a pure public service model, does require a delicate balance, and you're going to have different viewpoints on where that should end. I have looked at police governance and accountability for a number of years. A theme you sometimes hear—and this is not to disparage the civilian review process—is that sometimes the civilians take a different perspective, and it's less strident than it would be from the police agency itself. Now, that's anecdotal, from talking with police agencies around North America when I was looking into that issue.

But we do have instances where, for example, the ERC, the external review committee, has made a recommendation to the commissioner on a conduct case and he has said, "No, I'm not going to accept your approach to it for this reason...". An example I would give, just to try to help the committee a little, is a case we have in which a member discharged his weapon accidentally in the course of a pursuit outside of his vehicle; he got out and was in the middle of a storm. There was an agreed statement of facts. The board found in the early resolution process that it didn't meet the threshold for misconduct. It went to the ERC on appeal and the ERC supported that view.

The issue was about the reporting of a discharge of the weapon and whether it happened immediately or appropriately. The ERC was of the view that nobody really got hurt and there weren't any serious consequences, that there was some delay in reporting and that it was okay. The commissioner took the view that this is an operational environment and when you discharge your weapon, that needs to be reported immediately. The commissioner's view was that crime scenes need to be protected and there was no excuse in this context.

That is an example of where there can be disagreement, but ultimately, the commissioner is responsible for delivery of policing, as to whether force and other things are used. He is responsible to the minister and responsible through to Parliament. I think that in this context policing presents a slightly different problem in terms of who ultimately should be responsible for it. If you're going to ask the commissioner and you're going to ask your line officers to be accountable for the conduct they mete out, I think they should be accountable for it at the end of the day.

The Vice-Chair (Mr. Randall Garrison): Thank you very much, Mr. MacMillan.

We'll now go to Mr. Rafferty.

Mr. John Rafferty (Thunder Bay—Rainy River, NDP): Thank you very much.

It's interesting. In your last comments, you were talking about municipal forces and so on, and in Ontario we've had a major harassment case where the punishment, if you will, ended up being a one-year demotion, one pay grade down. One thing that is missing from this bill is any kind of clear anti-harassment policy.

That's making the news right now. It has been in the news with the RCMP, and it continues to be. I think there was something the other night on CBC that was an update from 10 years ago.

I'm just wondering if both of you think it would have been useful and appropriate to have in this bill a very clear idea of specific standards, behaviour, or criteria.

C/Supt Craig MacMillan: It has probably become clear that I like the view that you build your framework and then you consult with your stakeholders and build the details. The code of conduct can have a very specific statement when it's developed to talk about harassment. There's no question it can deal with that beyond the general comments. You can build that into it.

The other component I see as important is that while Treasury Board has some responsibility over this as the employer, so does the RCMP. The ability to create rules to create a process to deal with harassment complaints is important. I've already had meetings since the last time I was here on fairly complicated, complex cases involving harassment. It's disheartening. You can't move them forward quickly, but you are entangled in a bit of a snare when you have the situation of the part IV, which says you have to do certain things. You're trying to resolve this, trying to get rid of the poisoned work environment, and you're not doing it in a timely way. Nine months or a year later, you're saying that the harassment one didn't turn out, and now you're into code of conduct. Then there is the view that we do a code of conduct investigation and then try to do harassment resolution.

I think there are two parts. The code of conduct can speak to it specifically. That can occur through consultation, with a statement on that. We now have a process to create rules to deal with harassment that allow us to comply with Treasury Board directives, which are important in this area, as the employer generally for the core public service.

• (1715)

Mr. John Rafferty: My sense from your comments is that the RCMP is moving forward on this particular issue.

C/Supt Craig MacMillan: Yes, I would say it's moving forward, and it's been trying to move forward for a number of years in terms of better workplace relations and having policies in place.

But policies aren't that meaningful—which would be the follow-up question—when nothing is seen to be happening about it in a fairly efficient and timely way. I think the bill provides us the ability to create that process where you can resolve, but if you have to investigate, you can, and provide a better resolution at a lower level without necessarily getting into formal proceedings.

Mr. John Rafferty: In this bill, would some sort of mention have been useful to the work you're trying to do and trying to move forward on, or would it have been detrimental?

C/Supt Craig MacMillan: I'm not sure what it would contribute, because the minute you enshrine it in the legislative piece, that's what you have. I'm not quite sure how you're thinking of crafting that, but I would rather have the ability to say that it's the responsibility of the commissioner, Treasury Board is going to say that, and we're required to do it, and then create the processes that enable you to ensure that's happening.

It took them 20-some years to get the legislation amended last time, after the Marin commission. In some ways, we're paying homage to Marin, because we're trying to be more remedial and corrective. In other instances, we're not accepting some of the things that were there. A series of other reports have in some respect talked about that.

I think we can build the processes that deal with sexual harassment and harassment issues.

Mr. John Rafferty: That leads me to the question of the punishment fitting the crime.

You indicated that you have some experience in municipal police forces, and that all police forces seem to deal with things in much the same way. That's also my experience today.

I don't know if you ever worked in uniform recruitment or not, but if someone is found to be lacking, for example, to be guilty in terms of driving under the influence, or shoplifting, or harassment, and they come to the police force looking for a job, and that's there, would they be hired?

C/Supt Craig MacMillan: Having a criminal record does not necessarily mean you won't be hired, because if there's a pardon in process, it would go to the character of the individual and whether you could hire them.

I'm giving you an evasive answer to the extent that I know we've hired people who may in the past have had a conviction, but they've received a pardon. It might have been for assault or something like that, and it happened a number of years ago, when they were 16 or 17. They're now 28, they have a whole series of life experiences behind them, and they can demonstrate integrity and character.

Some things are certainly going to preclude you from going into policing, but I wouldn't want to be so specific as to say you could never do that.

Mr. John Rafferty: Thank you very much for that answer.

How much time do I have left?

The Chair: Your time is up. It was an interesting answer, so I gave you an extra 20 seconds.

We will now move to Mr. Payne, please.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Chair.

Thank you, gentlemen. There have been some very interesting comments today.

Mr. MacMillan, you talked about offences. You have some informal process, I guess, for figuring out what the discipline would be for particular offences. In one instance, you talked about a DUI and getting seven to 10 days off. Could you give us an idea of how that was developed and what kinds of things are in there in terms of discipline?

C/Supt Craig MacMillan: In our formal discipline process, which is where you go before a board, because we have what I'll call prosecutors and defence counsel—we have different terms for them—they have access to a database that contains all of our decisions. They can search for a term such as “impaired driving” or other things like that, and the database will produce a series of cases. They review those cases and determine how a case is the same or different. Most of them have experience in this area and will develop their own tables, which they'll have with them, so they'll know what you're talking about.

In informal discipline, we have advisers available. They will consult with these representatives. When you're talking about informal discipline, there's no board involved. Again, there's experience. There is a range of sanctions that you know are imposed under certain circumstances, and then you take your aggravating and mitigating circumstances into account.

Other departments have gone with a more formalized process. I don't know if it's abuse of authority with no aggravating factors, you're going to get three days or five days, or 10 days if it's serious. I saw that in the FBI context.

We clearly will have to move in that direction, because the decision-making is going to be at a lower level. In the more serious cases, which are now going to be below dismissal, there will be a group in there that previously would have been through a board. That's going to be less formalized. It's now going to be in the non-board process. We're going to need to have mechanisms in place to ensure consistency and ensure there is an understanding of the facts and the range of sanctions that would be imposed in that instance. There will have to be some clear work done in that area.

• (1720)

Mr. LaVar Payne: That has to be through the consultative process, then?

C/Supt Craig MacMillan: We have some nominal draft measures that we have created within the legislative reform initiative that Superintendent O'Rielly is running. We will take those to the

stakeholders and ask if there is anything that they could add or take away.

I can reflect on what Marin said. You have to have flexibility in sanctioning. I think they lost that a little bit when they actually got the 1980 act created. I understand what they were doing at the time, and it was right for the time, but more than one day's pay or 10 days' pay was pretty significant then. I think we just have a little more room to manoeuvre, and we can be a bit more innovative in giving flexibility to managers and the employees involved to maybe come up with appropriate sanctions as well, taking into account the circumstances.

Mr. LaVar Payne: We've also heard about timeliness of reviewing these complaints. Maybe you can see how this is going to change under the act and give us some information on that.

C/Supt Craig MacMillan: The commissioner can certainly have the ability to create rules around investigations and timelines. We've talked about that. There are people who would say not to have timelines, because you always get in trouble, and others would say to have very specific and tight timelines. I know of jurisdictions that have gone with a very clear prescription, and it has not been very successful, because nobody is in compliance with the timelines.

I think the distinction is—I can't necessarily speak for the drafters—that when you have an independent external body, such as the ERC or the CRCC, the notion that you would set out in the legislation that they will have service standards is slightly different, because they're to be independent. But with the RCMP, there is the ability of the commissioner to create rules, and more specifically, I guess, the minister could give a directive on that. He has given a directive to us on creating an annual report and dealing with discipline and some aspects of that. I think that can be built in. If it's not working satisfactorily, there could be some feedback from the minister's office on that.

Mr. LaVar Payne: Okay.

We've also heard about these individual provincial oversight committees. Could you give us some comments on that? Do you see those being beneficial? Would they be cost-effective? What impact would they have?

C/Supt Craig MacMillan: I think there is some cost-effectiveness to it, but I also think there's an important component of creating through that the ability to have public confidence and stakeholder-contract partner confidence in the process as well. To be clear on it, the public complaint will still exist in the CRCC; they'll have the ability to review that. But if it's a serious incident, where there's criminal misconduct or a serious injury, you'll have the ability to have these external bodies review it. That's because they would have the criminal jurisdiction, essentially. They would then report to crown counsel, who could make the decision on whether there would be charges laid.

If the independence is the key factor, and clearly it is, as these are independent bodies, you need to integrate service delivery. We're in a time where it's hard even for us to be doing investigations all over Canada in relatively serious incidents, so I think that having local bodies available and qualified to do that will be very important in having trust and confidence.

The Chair: Thank you, Mr. MacMillan.

Mr. Garrison, please, for five minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

In dealing with discipline in the bill, I don't recall seeing any section which talks about certain things being excluded from the informal resolution processes.

Is there any section in the bill that covers that?

C/Supt Craig MacMillan: Yes, there is something about that. When a public complaints is involved, you have to inform the CRCC.

I think there's an ability for them to say what things might not be subject to informal resolution or early resolution. I could look, but I don't want to take up your time doing that.

•(1725)

Mr. Randall Garrison: It makes me feel better that you don't know either, because I've been trying to find it.

My concern would be that there ought to be such a list, as there are sometimes things that if they were subjected to an informal process could inflame rather than solve the situation.

Could you tell me a bit about your experience with informal resolution?

C/Supt Craig MacMillan: I've done informal resolutions in private practice, as a lawyer, with municipal police departments, and I've been involved in informal resolutions in the RCMP.

The key component of this, really, is the fact that there's protection for conversations between the parties, the complainant and the police officer and the supervisor. My advice in the early days was to get in the room, if this was something that could be solved, and get it done, knowing that it can be protected and you can resolve these things. It is very important.

But there is the potential of it being inflamed. I think the CRCC will have the ability to also participate if there's a public complaint and perhaps provide mediation.

My colleague has just pointed out proposed subsection 45.56(4):
The Governor in Council may make regulations prescribing the categories of complaints that are not to be resolved informally by the Commissioner.

Mr. Randall Garrison: Thank you very much. That's the section I was looking for.

At this point there is no list that will be—

C/Supt Craig MacMillan: Presently you can resolve pretty much anything, if the parties are in agreement and there isn't a mandatory review by the CRCC or there will be.

Mr. Randall Garrison: Does the clause say it will be set by the Governor in Council?

C/Supt Craig MacMillan: Yes, through regulations.

Mr. Randall Garrison: It will be through regulations.

My last question for both of you today is, were either of you consulted in the process leading up to the preparation of this bill? Did you participate in any way in the drafting of or provide input on this bill?

C/Supt Craig MacMillan: I originally was the senior special adviser to the legislative reform initiative, so I had participation in this.

While it's correct to say that the staff relations representatives were not consulted in the drafting component of it, because of the unique way it unfolded, where you had Bill C-43 as a predecessor bill, there was consultation and discussion with various stakeholders, presentations, town hall meetings, and feedback on what was essentially going to be a public service model. That did inform and influence what we did, and it was taken into account.

After the bill was introduced, we entered into, as Staff Sergeant Townsend confirmed, the consultation phase that we will continue on.

So, yes, I was consulted.

Mr. Randall Garrison: I will ask the same question of Mr. Jolicoeur.

Mr. Alain Jolicoeur: No, I was not consulted on this bill, but I was involved in discussions during the development of the previous one. One might say it was a consultation, but I was not involved with this one.

Mr. Randall Garrison: Thank you.

That concludes my questions.

The Chair: All right.

We'll move back to Mr. Payne. Do you want to continue?

Mr. LaVar Payne: Yes, I do. Thank you, Chair.

Mr. MacMillan, we were talking about these public commissions and we talked about criminal offences.

At what stage would this involve the public commission reviewing criminal offences? Are we talking about a DUI or shoplifting, or are we talking about far more serious crimes?

C/Supt Craig MacMillan: The CRCC itself would not have jurisdiction over the investigation of a serious incident. That would be held as described by Public Safety, by the specialized agency that exists in the province, by another police force. If it were undertaken by the RCMP, in what would likely be very limited and special circumstances, there's the ability to appoint an observer.

That criminal investigation, if it turns into that, would be done by that department or agency and submitted to crown counsel for prosecution, if that's the route and there's charge approval.

The public complaint element that may still exist relative to that serious incident could still proceed on a slightly different track, but I think it would probably be influenced and informed by what was happening on the serious incident component. The CRCC would still have jurisdiction over that.

If misconduct internally was identified, there's a third element that it would be dealt with internally. If there were a public complaint, the complainant would be informed of the results of that. If it ended up in a dismissal case, it would be a public hearing process, which would be reported on. There's a fairly heavy review that would be undertaken, particularly with serious incidents.

•(1730)

Mr. LaVar Payne: Thank you.

Thank you, Chair. That's all I had.

The Chair: Thank you both, again, for appearing before our committee today. We appreciate your input and your answering questions.

As there are no other questions, the meeting is adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and
Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les
Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à
l'adresse suivante : <http://www.parl.gc.ca>