Royal Canadian Mounted Police External Review Committee

Sanctioning Police Misconduct -

General Principles

DISCUSSION PAPER 8

Sanctioning Police Misconduct -

General Principles

Royal Canadian Mounted Police
External Review Committee

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

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Royal Canadian Mounted Police
External Review Committee

Discussion Paper Series

Number 8: Sanctioning Police Misconduct

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FOREWORD

This discussion paper is the eighth in a series produced by the Research Directorate of the RCMP External Review Committee. The Committee's series of research papers is on mandate-related issues of interest to the police community. The discussion papers are designed to bring forward ideas for discussion and comment, which are then captured in the follow-up consultation reports.

In submitting his research, the consultant made a number of general comments about his goals and methodology. The following comments may be of interest to readers of this discussion paper.

> The purpose of this Discussion Paper is to examine the general principles that should apply in sanctioning police officers for misconduct. In the course of researching this paper, one senior police officer with considerable disciplinary experience wrote to me as follows:
>
> > "I have to add that I am concerned with the type of report you might submit and the weight that might be given to that report when it is plain to me that you are not at all familiar with the topic."
>
> I appreciated this frank assessment and while I cannot entirely agree with him,[1] I do think that his comments raise two points which are worthy of brief comment.
>
> 1 This assessment of my expertise was based on the fact that I mistakenly assumed, in sending a questionnaire to this officer's discipline unit, that at least 10 officers worked in that unit, when in fact the unit had considerably fewer than 10 officers. The officer also had some unspecified concerns about the questionnaire.
>
> First, the Discussion Paper is not a Final Report setting out firm recommendations for the reform of police discipline practices. The purpose of this Discussion Paper is to collect information, to examine options and to stimulate discussion amongst experienced police personnel. The weight given to this Discussion Paper will depend entirely on whether experienced police personnel find the information, options and ideas set out herein to be sensible, practical or worthy of further investigation. The RCMP External Review Committee will also subject this Discussion Paper to a thorough consultation process by sending it out to a large number of police organizations asking for their comments on the information, ideas and options contained herein. The results of this consultation process are then published as a Consultation Report by the External Review Committee.

The second point relates to my own knowledge and experience concerning general principles for sanctioning police misconduct. It may help readers of this Discussion Paper in sifting through the information, ideas and options in this paper to realize that they are coming from a law professor whose principal expertise is in criminal law and sentencing, and not police administration or discipline. This has the obvious disadvantage that some of the ideas and options suggested may not be practical or workable in the eyes of experienced police personnel. The consultation process will weed out the impractical. On the other hand, my background has the advantage of providing a look at police sanctioning principles from the perspective of someone who is not an active participant in the existing system. Experience teaches us that being too close to a subject can sometimes distort our vision and prevent us from seeing other alternatives. A fresh look from an interested outside observer can sometimes be of assistance. Whether it actually is or not in this case will ultimately be determined by the readers of this Discussion Paper.

The Committee would like to extend its sincere appreciation to those who assisted the consultant in carrying out his research. The paper could not have been written without the cooperation and assistance of many people in the police community across the country.

Simon Coakeley
Executive Director
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Chapter I

INTRODUCTION

The topic of police discipline is a large and complex one. Aspects of this topic, including suspensions with or without pay while disciplinary proceedings are pending, procedures for disciplinary dismissal and the impact of complaint procedures on discipline, have been discussed in previous ERC Discussion Papers. The principal focus in this Discussion Paper is on the general principles that should be applied in sanctioning police misconduct.

The information, ideas and options in this Discussion Paper have been culled, in the main, from the following sources:

(1) the literature on employer-employee management techniques generally, and police management and administration specifically;

(2) discipline principles derived from labour arbitration cases in general;

(3) police discipline decisions reported in the Ontario Police Reports, the RCMP Adjudication Decisions and selected decisions from provincial police commissions;

(4) a survey of police opinions on the general principles used in sanctioning police misconduct; this survey was sent to police chiefs and senior disciplinary officers of approximately 20 provincial and municipal police forces, to presidents of police associations for the above provincial and municipal police forces and to provincial police commissions, as well as to a significant number of disciplinary officers and division staff relations representatives in the RCMP.

In Chapter 2, the meaning and types of discipline are explored in a preliminary fashion, including the notions of punitive, remedial, progressive and affirmative discipline.

In Chapter 3, emphasis is placed upon techniques for reducing or lowering the incidence of police misconduct and thereby obviating the need for disciplinary sanctions.

In Chapter 4, the legislative framework for police sanctions is examined. A number of deficiencies are identified, including the absence of any legislative statement of the aims and purposes of discipline, the absence of any legislative guidance on the appropriate sanction, or appropriate aggravating or mitigating factors, for different types of misconduct and an inadequate range of disciplinary sanctions. These and other factors contribute to a real risk of unwarranted disparity in police discipline cases. Data on the opinions of police personnel in regard to police disciplinary sanctions is also reported in Chapter 4.

Chapter 5 involves an analysis of the general principles for sanctioning both on-duty and off-duty police misconduct, including the need for less punitive, more remedial sanctions.

Chapter II

THE MEANING OF DISCIPLINE: A PRELIMINARY ACCOUNT

2.1 Positive and Negative Images

What do you normally think of when the word "discipline" is mentioned? What picture does the word create in your mind? It can in fact evoke both positive and negative images. Like many words, its meaning varies depending on the context in which it is used.

In its original Latin form (*disciplina*), it meant learning or instruction. We still use the word discipline in that context. For example, we refer to an organized body of knowledge or learning such as law, medicine or science as a discipline. The word discipline is also used in a very positive sense to refer to self-learning and self-control when, for example, we speak of a person being "very disciplined".

On the other hand, the word discipline is frequently used in a more negative sense. Discipline is what happens when one breaks the rules. Discipline is used to impose order or control over someone. Discipline is a punishment or a chastisement. Even in this more negative sense, discipline still involves the idea of learning. The disciplined person is supposed to learn a lesson from the discipline; the punishment or chastisement is suppose to teach that person not to break the rules again.

The problem with discipline as punishment is that it is a relatively ineffective method of teaching or achieving socially desirable behaviour. We have known this, as a matter of common sense and experience, for centuries. More recently behavioural psychologists and others who systematically study principles of learning have confirmed what we already knew -- that various methods of positive reinforcement and modelling are far more effective than aversive conditioning (punishment) in achieving behaviour control. In spite of this, society tends to resort all too readily to punishment as a method of controlling behaviour. Certainly this is the case in terms of employer-employee discipline generally and police discipline specifically.

2.2 Punitive and Remedial Discipline

One of the central recommendations of the Marin Commission[1] was that a more remedial approach be taken to discipline than then existed under the *RCMP Act*[2] which contained a generally punitive approach to discipline. In the Marin Commission Report the following observations are made:

> It seems that most people comprehend disciplinary action as referring only to the assessment of punishment in response to some failure to perform in accordance with an established standard. This narrow understanding overlooks what we think is the principal function of discipline, which is to train, correct or develop by instruction or example.... It would be much more constructive if all those involved with the system could view it as being primarily designed for training and instruction, with the enforcement of obedience and the maintenance of order being secondary or

collateral objectives.

...

Not all problems giving rise to breaches of discipline, misconduct or unsatisfactory job performance can be corrected through the use of punishment. While a remedial approach to discipline recognizes that sanctions may sometimes be necessary, it also recognizes that there are many situations in which punishment is not only inappropriate, but unfair.

Problems of performance and conduct may be due to inconsistencies between rules, regulations and directives and the operational requirements of policing. In other cases, local conditions such as a shortage of adequate manpower, ineffective leadership and supervision or a protracted stress situation may give rise to problems of either conduct or performance.

In a remedial system, steps would be taken to ensure that, before punitive action of any sort was taken, the above considerations had been reviewed and precluded as contributing factors of any significance. Only if a supervisor is assured that a particular difficulty relates primarily to the individual concerned should punishment of any sort be imposed....

Even in those cases where the individual is the source of the problem, punishment may not be the appropriate response. An inability to adjust to local conditions, inadequate training, a lack of familiarization with new requirements and regulations or a personality clash with a supervisor may account for whatever difficulty arises. Here again, accurate identification of the source of a difficulty must precede any disciplinary action, punitive or non-punitive.

When discipline is necessary, an approach which seeks to correct and educate a member should precede one that seeks to assign blame and impose punishment.[3]

Substantial and significant changes were made to the disciplinary system when the new *RCMP Act* came into force in 1988. In particular, an effort to make the system less punitive was pursued by changes in language and procedure, by dividing discipline into formal and informal discipline and by adding new sanctions aimed more at correction than punishment (e.g. counselling, retraining, direction to work under supervision and transfers)[4]. Although the new *RCMP Act* gives discipliners the opportunity to use these corrective sanctions, it does not mandate their use. It is unfortunate that the new *RCMP Act* does not include some sort of specific legislative direction to the effect that a disciplinary approach which seeks to correct and educate a member should always precede one that seeks to assign blame and impose punishments.[5]

Perhaps even more importantly, the new *RCMP Act* does not include any specific legislative provision requiring a remedial approach to discipline from a systemic or operational perspective.

It is unfortunate the new *RCMP Act* did not specifically incorporate the recommendation in the Marin Commission Report on this point, when the Commission stated:

> Where conditions beyond the responsibility of the member are found to be contributing factors to problems of either performance or conduct, no disciplinary action should be taken. Rather, a supervisor should report such matters and take whatever corrective action he deems necessary.[6]

The remedial approach has been partially adopted in the British Columbia Police (*Discipline*) *Regulation*[7] which provides:

> 11.(4) In particular, the investigating officer shall identify such organizational or administrative practices of the municipal force as may have caused, or contributed to the creation of, the disciplinary default.
>
> 12.(1) On receipt of the investigating officer's report and recommendations, the chief constable or his delegate shall decide on appropriate action.
>
> (2) The chief constable or his delegate shall consider independently of disposition of the individual case all matters of a purely organizational or administrative nature which the case indicates may need further consideration.

Likewise, section 22 of the Manitoba *Law Enforcement Review Act* provides:

> Where the Commissioner identifies any organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the Commissioner may recommend appropriate changes to the Chief of Police and to the municipal authority which governs the department.[8]

2.3 Negative or Traditional Discipline versus Positive or Affirmative Discipline

In his book Discipline: Policies and Procedures,[9] James Redeker describes two types of employee discipline; the first he refers to as the traditional system of discipline and the second is an alternative form of discipline which he calls affirmative discipline. Under the traditional system, discipline is essentially a negative tool in the sense that punishment is used as a method to maintain certain standards of conduct. The traditional system normally incorporates the notion of progressive discipline, that is, progressively more severe penalties may be imposed for each subsequent violation of the rules of conduct. Except in cases of very serious misconduct, a first violation may result in a warning or reprimand, while a second violation would normally result in a more severe sanction. In that sense, progressive discipline is seen as corrective discipline; the purpose of increasing the penalty for each subsequent violation of the established rules of conduct is to give the employee an opportunity to correct the errant behaviour before the ultimate penalty of discharge is imposed.[10]

Redeker notes that the hallmark of the traditional system of progressive discipline is punishment and that it is constructed on the basis of an illogical premise: namely that an employee will get progressively better by being treated progressively worse.

On the other hand, a system of affirmative discipline is built on the notion of the employee consciously and positively affirming the need to accept and conform to the employer's standards of conduct d that employee wants to remain in the employment relationship.

Since membership in a workforce is essentially voluntary and contractual, proponents of affirmative discipline suggest that when an employee transgresses the rules of the workplace, the employee should be required as a precondition of continued employment to reconfirm his or her commitment to accepting and conforming to the rules of the workplace. Redeker describes the several steps that are involved in a system of affirmative discipline.[11]

1. Initial Employment - Considerable time is spent with the employer making sure that the employee understands all the rules of the workplace and why those rules are necessary and important. The employee formally signs a statement of assent and commitment to those rules of conduct.

2. Period of Probation - Upon expiry of any period of probation, the employee is asked whether he or she wishes to become a permanent employee, recognizing that permanent employment involves an assent and commitment to the company's or organization's rules. If the employee accepts the offer of permanent employment the employee's supervisor will explain again the company's policies and rules and the employee will once again formally sign a second statement of assent and commitment. This second affirmation emphasizes the importance of the rules and policies and builds a consensual bond between the employee and the supervisor; it gives the supervisor a personal interest in seeing the employee succeed and allows the supervisor to feel more comfortable in confronting the employee about any possible infraction.

3. First Violation - Assuming it is not a major violation, the supervisor meets with the employee, discusses the violation and obtains a verbal assurance from the employee that he or she understands the rule and his or her commitment and obligation to follow the rule. The details of this meeting are then confirmed in writing to the employee.

   Under a traditional system of discipline, the employee may be warned that any future occurrences of that conduct will result in serious discipline. The employee will have the sense of being punished or chastised. In the affirmative system of discipline, the employee will have the sense of not living up to a promise he or she made and will be aware of having made a fresh commitment to conform to company rules. The employee will be inclined to think that he or she must try harder to fulfill a personal

promise rather than thinking that he or she must tow the line to avoid more severe punishment.

4. Second Violation - The employee is once again counselled by his or her supervisor and this time is required to reaffirm his or her desire for permanent employment by signing a special reaffirmation of company rules and policies. This special reaffirmation is intended to emphasize in a forceful way that both parties recognize that their voluntary association or contract of employment is premised on an acceptance of the rules of the workplace. The employee is not left with the impression that he or she is being punished but rather with a feeling of having failed to live up to an important personal commitment.

5. A Third or Subsequent Violation - At this stage the supervisor will ask the employee directly: "Do you wish to continue your employment?" If the employee does, the supervisor will ask the employee to sign a statement

   (a) acknowledging violation of a rule,

   (b) indicating a desire to remain employed,

   (c) reaffirmation of assent and commitment to the company rules, and

   (d) recognition that another similar violation will constitute a lack of desire to remain employed and will constitute a voluntary termination of employment.

Even at this stage, the indications of punishment are absent, replaced instead by a statement of responsibility (i.e. I want to keep my job and I know that to do so I must keep my promises). If the employee fails again to keep this promise, the employee has already agreed that he/she may be required to leave his/her job. The employer may legitimately suspend or dismiss the employee without that action being characterized as punishment it is in a sense a voluntary termination.

Redeker states that while the affirmative approach to discipline may have the appearance of being nothing more than a transformation in language of the traditional system of discipline, there are in fact substantial differences: "The basis of the affirmative approach is to entice an employee into adherence to standards of conduct, rather than drive the employee into conformity through punishment. Rather than try to avoid transgressions, the employee is asked to live up to a standard, which is subtly made the condition of employment. The burden is thus always placed on the employee."[12]

Since affirmative discipline attempts to treat disciplinary encounters positively, rather than in a negative or punitive fashion, the employee is more likely to accept affirmative discipline, the supervisor is less inclined to feel that he or she is in direct conflict with an employee and therefore

the continued work relationship is apt to be more healthy than after the imposition of punitive discipline.

Redeker's description of affirmative discipline suffers from an over-emphasis on the individual employee as the cause of the disciplinary problem, without focussing on altering structural or management factors (remedial discipline) that may have contributed to, or permitted, the disciplinary fault. Redeker's notion of affirmative discipline could also be abused if employers resort to the system's reliance on voluntary resignation in cases where the cumulative incidence of misconduct do not really warrant dismissal. Apart from these reservations, the idea of making discipline more positive and less negative is worthy of serious consideration.

Chapter III

STAYING OUT OF TROUBLE - AVOIDING THE NEED FOR DISCIPLINE

Although the purpose of this Discussion Paper is to focus on the general principles for imposing disciplinary sanctions on police officers for misconduct, it is well worth remembering that there would be no need to focus on sanctions if we could magically eliminate police misconduct. This is not an entirely Utopian dream. Like the war against crime, poverty or pollution, the ultimate goal of absolute elimination may not be attainable, but there is much that can be done to reduce the incidence of police misconduct, both in the short-term and in the long-run.

What factors might contribute to a reduction in the incidence of police misconduct? How might these factors be identified? One approach would be to identify police forces with a low incidence of police misconduct and compare those police forces with ones where the incidence of police misconduct is much higher. While there do not seem to have been any empirical examinations to date within Canadian police forces which identify factors contributing to a lower incidence of police misconduct, the studies which compare Japanese police, who have a very low level of police misconduct, with American police, who have a much higher level of police misconduct, are both interesting and revealing.[13]

In short, these studies point to a number of factors which may contribute to a lower incidence of police misconduct, including:

(1) a stratified system of recruitment (i.e. recruitment for different policing sectors),

(2) more intensive recruit training and more continuing police education,

(3) more internal supervision of police functions,

(4) community-style policing,

(5) extensive community involvement in policing,

(6) active police-community relations, and

(7) intense solidarity and loyalty.[14]

However there is one other factor which these studies particularly highlight and that is the extraordinarily high level of pride, self-esteem and public respect which Japanese police enjoy (at least compared to the police in the United States). The important point here is that police discipline in Japan is largely self-discipline, which of course is always more effective than discipline by threat or punishment. In Japan, police are held in relatively high regard; a desire to maintain that public respect permeates the police force. Japanese police, like Japanese citizens, dread loss of face which can arise through police misconduct. In addition, an incredibly strong sense of police solidarity and loyalty provides additional incentives for individual police officers to avoid any improper conduct which could cause loss of face for the rest of the police force.

Apart from examining techniques and structures used by other police forces to reduce police misconduct, police administrators may also be able to reduce the incidence of police misconduct by replicating some of the human resource management techniques used in other work places. The key to avoiding discipline in any workplace is the establishment and maintenance of positive employer-employee relations. The quality of a police force and the incidence of police misconduct will ultimately depend upon the quality of leadership and management within that force and their ability to recruit, train and maintain highly motivated, satisfied police officers. Thus it is critical that police leaders and administrators be well versed in the basics of human resource management and stay abreast of new issues and trends in human resource management generally.

Certain developments are occurring in employment sectors other than policing that may be of significance to police administrators who are intent on anticipating and responding to new developments so as to preserve the highest level of positive employer-employee relations and the lowest possible level of misconduct. Industrial relations experts believe that the work force for the 1990s will have to be well-educated, broadly trained, and multi-skilled in order to respond to the emergence of more flexible work assignments and greater integration of technology.[15] In particular, the demand for greater employee input into management decision-making (participatory management) will accelerate, displacing authoritarian management structures. These issues, and other issues related to the future of policing,[16] along with techniques used in other non-police settings to achieve compliance with rules and standards of behaviour, are further examined in a separate document (see endnote 13).

Prevention is always preferable to treatment. For this reason, more thought, time and resources should be spent on creating a police environment where problems of police misconduct are least likely to occur.

Chapter IV

LEGISLATIVE FRAMEWORK FOR POLICE SANCTION

4.1 Introduction

The history of discipline in the RCMP has been fully described in the Marin Commission Report and need not be repeated here.[17] In short, military traditions contributed heavily to the basic form and procedure for discipline in the RCMP. In addition, much of the language and procedure in conducting disciplinary proceedings under the old *RCMP Act* (which was in effect until 1988) was reminiscent of criminal law and procedure. For example, breaches of conduct were described as "offences", the officer charged was either "tried" or could "plead guilty" and, if tried, the rules of evidence were the same as for trials under the *Criminal Code*. If the accused was found guilty, the presiding officer could "sentence the accused to punishment."[18] This criminal law language has been completely expunged from the new *RCMP Act*.

When one looks at the police acts and regulations in various provinces the pattern is the same. For example, the *BC Regulation* still uses language and procedure somewhat analogous to criminal procedure and uses the word "punishment" in describing the sanctions which can be imposed when "a disciplinary charge is proved".[19] Much the same could, for example, be said for Saskatchewan,[20] Manitoba[21] and Ontario,[22] although this will change under the new Saskatchewan legislation as it has in the new Ontario Police Services Act. In Alberta, the municipal police disciplinary regulation was amended in 1978, deleting reference to criminal law language such as "offence", "plea of guilty", "prosecution and defence", "acquitted" and "verdict" and replacing them with more neutral terminology.[23]

Recently the Supreme Court of Canada has made it clear that proceedings under the various provincial police acts are "neither criminal in nature nor do they involve penal consequences"[24] (i.e. imprisonment or "a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline"[25]). Thus, it is fair to say that there has been a recent trend, both legislatively and judicially, to separate police discipline from criminal law and sentencing. This is a healthy trend which should not be reversed. However, in one respect, comparing the legislative framework for sentencing in criminal law with the legislative framework for disciplinary sanctions can be quite instructive. The legislative framework for sentencing has been under sustained and serious criticism for the past fifteen years on a number of grounds,[26] including:

(1) the absence of any legislative statement of the aims and purposes of sentencing;

(2) no specific guidelines for judges who must impose sentences in individual cases;

(3) maximum sentences are designed for the worst-case scenario and provide no guidance as to the appropriate sentence in the average case;

(4) judges lack sufficient information on sentencing decisions and patterns of other judges; and

(5) all of the above leads to unwarranted disparity or inequality in sentencing.

With some variation, the above criticisms of the legislative framework for sentencing can also be made in regard to the legislative framework for employer-employee discipline generally, and police discipline specifically. Nor is this a problem unique to Canada. In a study of the disciplinary laws of 13 countries, Banderet made the following observation: "The first thing that strikes one when looking at the laws enacted on disciplinary matters is the thinness of the legislative fabric."[27]

4.2 Legislative Statement of Aims and Purposes

The various police acts and regulations generally list the types of conduct which can result in disciplinary proceedings and the sanctions which can be imposed. However, like the criminal law, they are totally silent on what the aims and purposes are for imposing disciplinary sanctions. The individuals responsible for imposing police discipline are given no legislative guidance on the appropriate aims and purposes of police disciplinary sanctions.

It is widely accepted that in reforming Canada's sentencing laws Parliament should provide a general statement of the aims and purposes of sentencing.[28] In other words, Parliament should give some guidance on how criminal sanctions should be used. For the same reasons, a legislative statement on the aims and purposes of disciplinary sanctions should be included in the relevant police acts and regulations. Failure to provide such a statement creates a substantial risk of unwarranted disparity in the imposition of police sanctions both within a police force and certainly between one force and another force.

There are several aims and purposes that one may wish to pursue in imposing disciplinary sanctions. These aims and purposes are not always complementary; sometimes they may conflict with one another. Even when they are not in conflict, one disciplinary officer may give substantially more weight to a particular aim or purpose than another disciplinary officer, with the consequence that the disciplinary sanction for two fairly similar cases can be quite disparate.

In general it can be said that the principal aim of discipline in any business or organization is to further the interests of that particular business or organization. In the context of police organizations that means the effective and efficient delivery of police services. It is widely accepted that police officers, being public officers, and dependent on the cooperation and assistance of the public, can only provide effective police services if they have the respect of the public. It is this rationale which guides police departments in demanding a high degree of propriety in the conduct of police officers both on and off duty.[29] Although the main purpose of discipline is to assist a police force in providing effective and efficient police services to the community, this aim can only be pursued within the context of what otherwise constitutes a just and fair sanction. What is just and fair will in turn depend upon a host of aggravating and mitigating circumstances. Nor is there any unanimity on how to best pursue these two stated objectives. Disciplinary sanctions may be imposed for one or more of the following reasons:

(1) as a just punishment (i.e. justice demands that a wrong be righted; punishment rights the wrong; wrongdoing cannot occur with impunity, it demands a response);

(2) to deter the officer being sanctioned from engaging in such conduct again;

(3) to deter other police officers from engaging in similar conduct;

(4) to educate, counsel, or retrain an officer in order to avoid such misconduct in the future;

(5) to reassure the public that police officials are in fact demanding the highest degree of conduct and integrity from police officers under their command.

If a sanction is imposed to ensure public trust or to achieve general deterrence of other police officers, then the personal circumstances of the particular officer at the time of the misconduct will likely be given less weight in determining an appropriate sanction than if the primary purpose of the disciplinary sanction is to counsel, re-educate or retrain the police officer. This type of potential conflict between competing purposes raises a serious risk of disparity in police sanctioning, as it does in sentencing. For this reason, a legislative statement in regard to the priorities of these competing principles would be both appropriate and helpful.

In the absence of any such legislative statement, it should not be surprising to discover that police chiefs and other senior police officers involved in the disciplinary process have differing views on the aims and purposes of disciplinary sanctions, and the importance of these aims.

This divergence of views is indicated in the data found in Tables 1.1 to 1.4. Police chiefs, senior disciplinary officers and police association representatives were asked the following question:

> Please indicate what importance you place on the following purposes or objectives of police sanctions. Please answer by using one of the following numbers.

1 = Always Important
2 = Usually Important
3 = Sometimes Important
4 = Occasionally Important
5 = Almost Never Important

Table 1.1 indicates the opinion of 67 municipal and provincial police chiefs and senior disciplinary officers from 15 police forces in 7 different provinces.

Table 1.1 - Municipal/Provincial Police Discipliners
(Total number of respondents: 67)

Importance of Objectives Reported by Percentage

Discipline Objectives:	1 Always	2 Usually	3 Sometimes	4 Occas-ionally	5 Almost Never
(a) punishment	25.7%	25.7%	30.3%	10.6%	7.5%
(b) deterrence of the offending officer	47.7	38.8	10.4	2.9	0.0
(c) deterrence of other officers	43.9	34.8	19.6	1.5	1.5
(d) education or rehabilitation	61.1	22.3	8.9	5.9	1.5
(e) to ensure good police management	43.2	29.8	16.4	8.9	1.5
(f) to ensure public trust in the police	67.1	14.9	11.9	3.0	3.0
(g) achieve consistency with sanctions applied in similar cases	46.2	32.8	14.9	4.5	1.5
(h) to achieve a just and fair sanction	90.4	7.9	1.5	0.0	0.0

Table 1.2 indicates the opinion of 27 officers and members of the RCMP from headquarters and one regional division who are involved in the investigation and administration of discipline.

Table 1.2 - RCMP Discipliners
(Total number of respondents: 27)

Importance of Objectives Reported by Percentage

Discipline Objectives:		1 Always	2 Usually	3 Sometimes	4 Occas-ionally	5 Almost Never
(a)	punishment	3.7%	25.9%	25.9%	25.9%	18.5%
(b)	deterrence of the offending officer	33.3	33.3	22.2	11.1	0.0
(c)	deterrence of other officers	29.6	25.9	22.2	22.2	0.0
(d)	education or rehabilitation	51.8	25.9	14.8	7.4	0.0
(e)	to ensure good police management	44.4	18.5	3.7	14.8	18.5
(f)	to ensure public trust in the police	70.3	14.8	3.7	7.4	3.7
(g)	achieve consistency with sanctions applied in similar cases	34.6	46.1	15.3	0.0	3.8
(h)	to achieve a just and fair sanction	96.1	3.8	0.0	0.0	0.0

Table 1.3 indicates the opinion of 16 presidents or representatives of police associations representing 10 different police forces from 6 different provinces.

Table 1.3 - Police Associations
(Total number of respondents: 16)

Importance of Objectives Reported by Percentage

Discipline Objectives:	1 Always	2 Usually	3 Sometimes	4 Occas-ionally	5 Almost Never
(a) punishment	6.2%	25.0%	50.0%	12.5%	6.2%
(b) deterrence of the offending officer	31.2	25.0	31.2	12.5	0.0
(c) deterrence of other officers	25.0	18.3	7.5	6.2	12.5
(d) education or rehabilitation	53.3	26.6	13.3	6.6	0.0
(e) to ensure good police management	31.2	25.0	12.5	18.7	12.5
(f) to ensure public trust in the police	31.2	31.2	25.0	12.5	0.0
(g) achieve consistency with sanctions applied in similar cases	50.0	31.2	12.5	0.0	6.2
(h) to achieve a just and fair sanction	81.2	12.5	6.2	10.0	10.0

Table 1.4 indicates the opinion of 15 present or former RCMP division representatives or sub-representatives from one regional division. These 15 representatives have an average of 17 years experience in the RCMP and three of the 15 representatives have been involved in the disciplinary process at least once during their careers. Although it would be improper to claim that these 15 members necessarily represent the views of all members of the Force, they are at least a group of knowledgeable members of the Force who have some experience in representing other members' concerns.

Table 1.4 - RCMP Division Staff Relations Representatives
(Total number of respondents: 15)

Importance of Objectives Reported by Percentage

Discipline Objectives:		1 Always	2 Usually	3 Sometimes	4 Occas-ionally	5 Almost Never
(a)	punishment	33.3%	13.3%	26.6%	26.6%	0.0%
(b)	deterrence of the offending officer	40.0	40.0	6.6	13.3	0.0
(c)	deterrence of other officers	26.6	31.2	13.3	20.0	6.6
(d)	education or rehabilitation	60.0	20.0	13.3	0.0	6.6
(e)	to ensure good police management	33.3	26.6	26.6	13.3	0.0
(f)	to ensure public trust in the police	46.6	20.0	26.6	0.0	6.6
(g)	achieve consistency with sanctions applied in similar cases	66.6	20.0	6.6	6.6	0.0
(h)	to achieve a just and fair sanction	86.6	13.3	0.0	0.0	0.0

All of the above respondents were also asked to specify other objectives not included in paragraphs (a) to (h). The vast majority of respondents did not provide additional objectives. What follows is a statement of other objectives provided by the few respondents who did reply to this question:

- to reinforce the concept of accountability, which is not always the same as paragraph (f) above;

- to satisfy the interests of the public complainant if there is one;

- maintenance of discipline when other (non-disciplinary) means cannot be used;

- if done fairly and consistently, it will reinforce morale and discipline;

- to rid the force of officers who ought not to be members of the force.

In looking at Table 1.1 (p. 16), it can be seen that police discipliners hold different views on the relative importance of various aims or purposes of disciplinary sanctions. For example, 51.5% of municipal and provincial police discipliners think that punishment is usually or always important while 18% think it is only occasionally or almost never important. Police association representatives from municipal or provincial police forces also have divergent opinions on the importance of punishment as a disciplinary objective: 31 % think punishment is usually or always important whereas 18% think it is occasionally or almost never important (Table 1.3, p. 18). RCMP discipliners rate punishment as a less important objective than do municipal and provincial discipliners: 29.6% think it is usually or always important, while 44.4% think it is only occasionally or almost never important (Table 1.2, p. 17). However, RCMP division staff relations representatives think punishment is a more important objective than RCMP discipliners do: 46.6% think it is usually or always important while 26.6% think it is only occasionally or almost never important.

The divergence of views noted above does not simply exist between one police force and another, but also exists between senior discipliners within the same police force. To take but one example, in one medium to large municipal police force, eight senior discipliner officers rated the importance of punishment as an aim or objective of police sanctions: one said it was always important, whereas another said it was almost never important; one said it was usually important while two others said it was only occasionally important; the final three respondents said it was sometimes important.

An analysis of the other objectives of police sanctions in Tables 1.1 to 1.4 will demonstrate that views also vary on the importance of these other objectives, although that variation is not as great in some instances as it is in regard to punishment. It should be noted that the greatest degree of consistency occurs with the last objective which is "to achieve a just and fair sanction". An overwhelming majority of all respondents rate this as always important. It is ironic that one of the factors that contributes to unjust or unfair sanctions is the fact that police discipliners hold different views on the aims and purposes of police sanctions.

In the absence of a legislative statement of the aims and purposes of disciplinary sanctions, individual police departments should at least develop their own statements. None of the police departments surveyed had such a statement. It is suggested that such a statement include the following principles:

(1) the main purpose of police discipline is to assist a police force to achieve its organizational objective of delivering effective and efficient police services to the community, also remembering that any disciplinary sanction imposed must be fair and just in the circumstances;

(2) where organizational or administrative factors are a significant contributing factor to the misconduct, priority should be given to correcting these factors rather than blaming and disciplining the individual officer;[30]

(3) where disciplinary action is necessary, an approach which seeks to correct and educate a police officer should precede one that seeks to blame and impose punishment;[31]

(4) when disciplinary action is necessary, the least onerous sanction appropriate in the circumstances should be chosen; formal discipline should only be resorted to where informal discipline is clearly inadequate;

(5) a disciplinary sanction should never be disproportionate to the gravity of conduct being sanctioned;

(6) both aggravating and mitigating circumstances must be taken into account in determining a just sanction;

(7) deterrence of other police officers and maintenance of public respect should only be pursued as sanctioning objectives within the context of what is otherwise a just and proportionate sanction;

(8) disciplinary sanctions should be consistent (similar cases with similar circumstances should receive similar sanctions).

4.3 Guidelines for Disciplinary Sanctions

In general it is fair to say that the various police acts and regulations provide very little guidance as to what type of disciplinary sanction is appropriate for various types of police misconduct. Nor do they generally specify what factors should be considered aggravating or mitigating circumstances.

Under the old *RCMP Act*, police misconduct was divided into major service offences and minor service offences[32] although there was enough leeway in these categories to allow certain

conduct to be classified as either. The old *RCMP Act* also specified a separate schedule of punishments for major and minor service offences, although the two schedules overlapped to a significant degree, including the possibility of dismissal for either major or minor service offences.[33] Neither the old *RCMP Act* nor the Regulations specified a maximum, minimum or average type of sanction for any specific offence. Thus, under the old *RCMP Act*, the full range of minor service offence punishments including dismissal was available for any minor service offence, regardless of whether it was petty or relatively serious. The same applied to major service offences. The full range of major service offence punishments could be applied to any major service offence regardless of the difference in degrees of seriousness of various offences.

Under the new *RCMP Act* and *Regulations*, a contravention of the Code of Conduct[34] will, at the discretion of the member in command or an appropriate officer, result in either informal disciplinary action or formal disciplinary action.[35] The *RCMP Act* provides that formal disciplinary action should be taken when "the appropriate officer is of the opinion that, having regard to the gravity of the contravention and to the surrounding circumstances, informal disciplinary action under section 41 would not be sufficient."[36] In approximately 90 percent of the cases informal disciplinary action is taken. In the remaining 10 percent, formal disciplinary action is taken. There are separate lists of sanctions for formal and informal discipline, although informal disciplinary sanctions can also be used in formal discipline cases.[37] There was not time within the scope of this study to examine in any detail the exact criteria (gravity of offence and surrounding circumstances) that are used in deciding to proceed formally or informally, whether those criteria are applied uniformly across the country and whether there is any significant disparity in the application of various informal sanctions. Those questions are however worthy of further study.

It is unfortunate that the new *RCMP Act* and *Regulations* give no more guidance than the old *RCMP Act* and *Regulations* in regard to the appropriate sanction for various types of misconduct. If a breach of the Code of Conduct is proceeded with formally then the full range of formal sanctions (from most serious to least serious) are available options regardless of the relative differences in seriousness between some types of misconduct and other types.

The same criticism can be made of the various provincial police acts and regulations. They list a full range of sanctions that can be applied to any disciplinary default (within the major/minor or formal/informal categories).[38] This type of legislative scheme gives no guidance as to the appropriate sanction in various types of cases. This lack of guidance is bound to lead to disparity in imposing disciplinary sanctions. One example of this is impaired driving (or driving with more than.08 blood-alcohol content). What disciplinary sanction, if any, should be imposed on a police officer who is convicted of the above offence in regard to off-duty conduct (assuming there were no aggravating circumstances such as a serious accident or high speed chase, etc.)?

In the RCMP, at least under the old *RCMP Act*, the normal sanction appears to have been a reprimand and a fine in varying amounts. Fines are abolished under the new *RCMP Act* but forfeiture of pay is available as a monetary sanction. The following cases in 1987 and 1988 are taken from the RCMP Case Digest:

Case #303. (September 5, 1987)

> Member charged with disgraceful conduct contrary to s. 25(o) of the *RCMP Act* in that he was convicted of impaired driving and refusal to provide breath sample.... Member found guilty. The length of time it took to process the disciplinary action, the absence of previous discipline and the member's good service were held as mitigating factors. Member reprimanded and fined $50.00.[39]

Case #307. (October 29, 1987)

> Member charged with conduct unbecoming contrary to s. 26 *RCMP Act* in that while off duty did operate a motor vehicle with more than 80 mg. of alcohol in his blood. Plea of guilty. Member involved in minor motor vehicle accident and charged under the Criminal Code with impaired driving. Member forthright and cooperative throughout. Fine of $25.00 and a reprimand imposed.[40]

Case #318. (November 24, 1987)

> Member charged with conduct unbecoming contrary to s. 26 *RCMP Act* in that he did operate a motor vehicle with more than 80 mg. of alcohol in his blood. Plea of guilty. While on in-service training course, member was involved in minor-injury motor vehicle accident after which it was determined he was impaired.. Member cooperated during investigation and pleaded guilty to the resulting criminal charge, for which he received a conditional discharge. Subsequent to the accident, member participated in alcoholism treatment program. Fine of $50.00 imposed.[41]

Cases 303, 307 and 318 indicate the norm for an off-duty impaired driving conviction is a reprimand and a small fine ($25 to $50). Other cases such as Nos. 299, 330 and 380 were more serious and were dealt with by a reprimand and a larger fine ($300-$400)[42]. However impaired driving is not necessarily dealt with in the same way by other police forces. In fact, the penalty varied substantially in the other police forces consulted. One police force normally imposed a forfeiture of 2 to 3 days leave (or pay) while another force recently warned its members that the norm would be forfeiture of 6 to 8 days leave (or pay). Under certain circumstances, dismissal is considered appropriate. In *Gamble*,[43] the Ontario Police Commission upheld an order for compulsory resignation or, in default, summary dismissal for an off-duty incident in which the police officer drove while impaired in a dangerous manner that threatened the lives of others. The officer was an alcoholic who had been given assistance and opportunities by his police force to reform but had failed to demonstrate a true commitment to do so. In *Watson*,[44] the Ontario Police Commission upheld a penalty of rank reduction from 1st to 4th class constable for six months for an off-duty incident of impaired driving at the more serious end of the scale. The Commission stated, at 815:

> It was urged upon us that the penalty imposed upon Constable Watson is out of line with the penalties imposed earlier by other police forces for similar offences. Accepting that that is the case we believe that there are very good reasons for this

> change in policy and change in attitude. In recent times the public's attitude toward drinking/driving offences has changed radically. The public is no longer prepared to treat drinking and driving as a minor slip or a minor offence. In view of this change in public attitude, the police forces of Ontario have changed their attitude with respect to the severity of these offences and we can but applaud them for that. It is our view that this is a very serious offence and demands a very serious penalty. Viewing only the offence, the failure to perform to a level anywhere near potential, and the fact that Constable Watson suffers from the disease of alcoholism, the matter would appear to call for dismissal. There are, however, some mitigating factors.

At the other end of the spectrum, in the case of *Re Communauté urbaine de Montréal and Fraternité des policiers de Montréal*,[45] arbitrator Gravel held that there was no presumption that a conviction for off-duty driving with a blood alcohol rate over .08% actually prejudiced the police force (i.e. compromised the prestige and effectiveness of the police function and contributed to loss of public confidence and esteem). In this case, considering the seniority of the officer, the absence of a disciplinary record and the fact that this was an isolated incident occurring outside working hours, the arbitrator held that no discipline was warranted.

These different approaches to sanctioning off-duty impaired driving ought not to be surprising when the disciplinary codes give no indication of the appropriate disciplinary sanction, if any, for an impaired driving conviction. This lack of legislative guidance is compounded by the fact that the various police acts and regulations do not contain any statement of what circumstances should be considered aggravating and mitigating factors. This lack of a legislative statement of aggravating and mitigating circumstances means that individual discipliners have to decide for themselves whether or not certain factors ought to be taken into account in determining a just and appropriate sanction.

Not surprisingly, police discipliners disagree amongst themselves on the significance of various aggravating and mitigating factors. Tables 2.1 to 2.4 show the disparity which exists in the minds of police personnel as to the relevance of these factors. For example, under item (g) in Table 2.1, it can be seen that 31% of police discipliners believe that cooperation in the investigation of the misconduct is always or usually important, while 25% of police discipliners believe that such cooperation is only occasionally or almost never a mitigating factor.

Tables 2.1 to 2.4 represent the answers received to the following question:

> Please indicate what importance you place on the following factors in determining a just and appropriate sanction. Please answer by using one of the following numbers:
>
> 1 = Always Important
> 2 = Usually Important
> 3 = Sometimes Important
> 4 = Occasionally Important
> 5 = Almost Never Important

Table 2.1 indicates the opinion of 67 municipal and provincial police chiefs and senior disciplinary officers from 15 police forces in 7 different provinces.

Table 2.1 - Municipal/Provincial Police Discipliners
(Total number of respondents: 67)

Importance of Factors Reported by Percentage

Aggravating and Mitigating Factors	1 Always	2 Usually	3 Sometimes	4 Occas-ionally	5 Almost Never
(a) prior good record	31.3%	41.7%	20.8%	5.9%	0.0%
(b) long service	4.4	13.4	35.8	25.3	20.8
(c) isolated incident	14.9	35.8	40.2	7.4	1.5
(d) provocation by others	4.4	16.4	29.8	35.8	13.4
(e) spur of the moment offence	5.9	19.4	31.3	34.3	8.9
(f) premeditated	80.5	11.9	3.0	1.5	0.0
(g) cooperation in investigation	14.9	16.4	44.7	14.9	8.9
(h) plea of guilty	8.9	13.4	22.3	40.2	14.9
(i) other signs of remorse economic hardship of penalty	13.4	32.8	26.8	25.3	1.5
(k) mental or emotional stress	35.8	29.8	22.3	11.9	0.0
(l) alcohol (or drug) problem	37.3	26.8	22.3	13.4	0.0
(m) seriousness of the offence	92.5	7.4	0.0	0.0	0.0
(n) not the primary offender	17.9	41.8	31.3	8.9	0.0
(o) likelihood of recurrence	9.1	0.0	59.0	22.7	9.1
(p) increase in this type of offence	31.8	27.2	25.7	13.6	1.5
(q) sanctions imposed on other officers	36.3	37.8	21.2	3.0	1.5

Table 2.2 indicates the opinion of 27 officers and members of the RCMP involved in the investigation and administration of discipline.

Table 2.2 - RCMP Discipliners
(Total number of respondents: 27)

Importance of Factors Reported by Percentage

Aggravating and Mitigating Factors	1 Always	2 Usually	3 Sometimes	4 Occas-ionally	5 Almost Never
(a) prior good record	18.5%	33.3%	33.3%	11.1%	3.7%
(b) long service	3.7	1.1	25.9	18.5	40.7
(c) isolated incident	14.8	37.0	40.7	7.4	0.0
(d) provocation by others	11.1	7.4	18.5	44.4	18.5
(e) spur of the moment offence	7.6	7.6	46.1	34.6	3.8
(f) premeditated	74.0	18.5	3.7	3.7	0.0
(g) cooperation in investigation	7.4	18.5	33.3	25.9	14.8
(h) plea of guilty	3.7	7.4	29.6	18.5	40.7
(i) other signs of remorse	14.8	11.1	37.0	33.3	3.7
(j) economic hardship of penalty of penalty	3.7	11.1	40.7	14.8	29.6
(k) mental or emotional stress	18.5	33.3	33.3	14.8	0.0
(l) alcohol (or drug) problem	22.2	29.6	37.0	11.1	0.0
(m) seriousness of the offence	88.8	3.7	0.0	3.7	3.7
(n) not the primary offender	3.7	29.6	40.7	18.5	7.4
(o) likelihood of recurrence	40.7	37.0	14.8	3.7	3.7
(p) increase in this type of offence	15.3	19.2	23.0	11.5	30.7
(q) sanctions imposed on other officers	37.0	44.4	18.5	0.0	0.0

Table 2.3 indicates the opinion of 16 presidents or representatives of police association representing 10 different police departments from 6 different provinces.

Table 2.3 - Police Associations
(Total number of respondents: 16)

Importance of Factors Reported by Percentage

Aggravating and Mitigating Factors	1 Always	2 Usually	3 Sometimes	4 Occas-ionally	5 Almost Never
(a) prior good record	62.5%	31.2%	6.2%	0.0%	0.0%
(b) long service	18.7	25.0	37.5	12.5	6.2
(c) isolated incident	50.0	50.0	0.0	0.0	0.5
(d) provocation by others	18.7	37.5	25.0	6.2	12.5
(e) spur of the moment offence	18.7	25.0	43.7	12.5	0.0
(f) premeditated	62.5	31.2	0.0	6.2	0.0
(g) cooperation in investigation	31.2	18.7	31.2	6.2	12.5
(h) plea of guilty	18.7	25.0	25.0	12.5	18.7
(i) other signs of remorse	33.3	33.3	33.3	0.0	0.0
(j) economic hardship of penalty	18.7	37.5	18.7	12.5	12.5
(k) mental or emotional stress	31.2	37.5	18.7	12.5	0.0
(l) alcohol (or drug) problem	25.0	56.2	18.7	0.0	0.0
(m) seriousness of the offence	56.2	25.0	12.5	6.2	0.0
(n) not the primary offender	6.2	62.5	31.2	0.0	0.0
(o) likelihood of recurrence	12.5	56.2	18.7	12.5	0.0
(p) increase in this type of offence	25.0	18.7	25.0	21.2	0.0
(q) sanctions imposed on other officers	50.0	37.5	12.5	0.0	0.0

Table 2.4 indicates the opinion of 15 present or former RCMP division staff relations representatives.

Table 2.4 - RCMP Division Staff Relations Representatives
(Total number of respondents: 15)

Importance of Factors Reported by Percentage

Aggravating and Mitigating Factors	1 Always	2 Usually	3 Sometimes	4 Occas-ionally	5 Almost Never
(a) prior good record	60.0%	33.3%	6.7%	0.0%	0.0%
(b) long service	6.7	20.0	53.3	13.3	6.7
(c) isolated incident	40.0	46.6	6.7	6.7	0.0
(d) provocation by others	20.0	53.3	26.6	0.0	0.0
(e) spur of the moment offence	26.6	40.0	20.0	13.3	0.0
(f) premeditated	86.6	6.7	0.0	6.7	0.0
(g) cooperation in investigation	13.3	13.3	60.0	6.7	6.7
(h) plea of guilty	0.0	40.0	20.0	13.3	26.6
(i) other signs of remorse	20.0	53.3	6.7	13.3	6.7
(j) economic hardship of penalty	33.3	13.3	46.6	6.7	0.0
(k) mental or emotional stress	46.6	33.3	20.0	0.0	0.0
(l) alcohol (or drug) problem	33.2	46.6	13.3	6.7	0.0
(m) seriousness of the offence	80.0	20.0	0.0	0.0	0.0
(n) not the primary offender	33.3	60.0	6.7	0.0	0.0
(o) likelihood of recurrence	66.6	13.3	13.3	6.7	0.0
(p) increase in this type of offence	20.0	33.3	26.6	13.3	6.7
(q) sanctions imposed on other officers	53.3	20.0	20.0	6.7	0.0

4.4 Range of Disciplinary Sanctions

There are several weaknesses in the existing legislative range of sanctions. Under the old *RCMP Act*, and under several existing provincial police acts and regulations,[46] all the disciplinary sanctions are punitive; none are remedial. The new *RCMP Act* has made a good first step in altering this. In particular, subsections 41(1) and 45.12(4) of the new *RCMP Act* provide the following corrective disciplinary sanctions:

(a) counselling;

(b) recommendation for special training;

(c) recommendation for professional counselling;

(d) recommendation for transfer;

(e) direction to work under close supervision;

...

Although these remedial sanctions are now available, it does not appear that (b) to (e) are being used very often. There is no legislative direction that these remedial sanctions should be given priority. Although counselling may now be used in 50 to 70 per cent of RCMP informal discipline cases, this counselling may often be rather perfunctory, resembling a reprimand, except it is verbal rather than written. Counselling should be given a much broader meaning and content.

More importantly, the new *RCMP Act* sanctions seem to ignore the importance of restitution and reparation. Disciplinary sanctions should be reparative of any harm done to the force, its members or other citizens. This may involve apologies, financial restitution or appropriate community services. Reparative sanctions are particularly important in restoring public trust when the police misconduct has adversely affected members of the public.

Another general problem with the existing legislative statement of disciplinary sanctions in the police acts and regulations is the fact that the range of sanctions is unduly narrow and restricted. Under subsection 45.12(3) of the new *RCMP Act*, the most severe formal sanction is dismissal from the force (or a direction to resign from the force). The next two most serious sanctions are either a demotion (which is not possible in the case of a constable or an inspector) or forfeiture of pay for a period not exceeding 10 working days. The difference in severity between discharge (sometimes called the capital punishment of employment law) and forfeiture of pay for 10 days is a bit like the difference in criminal law between capital punishment and imprisonment for 10 days. In other words, the *RCMP Act* does not allow any sanctions which are more serious than 10 days forfeiture of pay but less serious than outright dismissal (or a direction to resign). This can have the unfortunate consequence of forcing disciplinerers to resort to the ultimate sanction of dismissal in cases which are too serious to be dealt with simply by a forfeiture of pay for 10 days or,

alternatively, to impose 10 days forfeiture, rather than dismissal, recognizing that 10 days forfeiture is unduly lenient.

In many other employment contexts, an employee who has been disciplined for very serious misconduct may be subject to suspension without pay for a period up to as long as one year. This seems to be one example of a meaningful sanction between the forfeiture of pay for ten days and a dismissal. In appropriate cases, the suspended officer could also be required to engage in remedial education, retraining, counselling or reparative activity during the suspension and prior to reinstatement. Generally the other police acts have a very narrow band of sanctions between forfeiture of pay or leave and dismissal,[47] although several have somewhat longer forfeiture periods than under the *RCMP Act*.[48]

In the police disciplinary sanctions survey, the following question was asked:

> Do you think that the existing range of sanctioning options is broad enough? If not, what options do you recommend should be available which are not now available?

The responses to this question are set out in Table 3.1.

Table 3.1 - Range of Sanctioning Options

		Broad enough?	
		Yes	**No**
1.	Municipal Police Chiefs (or senior officers involved in discipline)	51	16
2.	RCMP officers and members involved in discipline	18	9
3.	Police Association Representatives	13	3
4.	RCMP Division Staff Relations Representatives	13	1
	TOTAL RESPONSES	95	29

It is obvious that police officers actually involved in applying discipline (groups 1 & 2 above) felt the inadequacy of the existing range of sanctions more than member representatives did. In fact 24% of municipal police discipliners (16 of 67) and 33% of RCMP discipliners (9 of 27) felt that the existing range of options was not broad enough.

What follows is a brief statement of additional options which were recommended by police chiefs or senior disciplinary officers:

- more latitude for punishment, i.e. extra duty;
- apology to victims;
- forfeiture of leave or other credits;

- loss of accumulated time off;
- higher fine range (currently $200 max.);
- longer suspension period (currently five days);
- mandatory drug and/or alcohol counselling;
- referral to counselling or treatment;
- any other appropriate requirements as part of sentence;
- conditional discharge would be very useful for officers requiring counselling (i.e. mandatory referral);
- require a form of sentencing, i.e. probation or conditional discharge provisions, to compel follow-ups/referrals;
- rehabilitation must always be considered and available;
- option to suspend sentencing for up to one year to ensure good conduct (needed primarily to handle behavioural problems which would include drug/alcohol addiction);
- order to perform community work d relevant;
- next to firing, maximum penalty is suspension for five days this should be increased to up to 30 days.

The following recommendations were made by RCMP officers and members involved in discipline:

- suspension with pay;
- suspension without pay;
- a form of temporary suspension between pay forfeiture and demotion or dismissal;
- intermediate options for better grading between minimum and maximum;
- counselling should be part of good personnel practices and not have a disciplinary connotation;
- the route one must take to get a formal discipline sanction is too cumbersome;
- the correct range exists; it is just that the process is so long and drawn out and the more drastic sanctions (i.e. dismissal) are almost impossible to enforce;
- more options should be available for informal discipline; for example, suspension of pay for up to five days by appropriate officer would, without a doubt, greatly reduce formal hearings;
- the options are broad enough, but they are not applied accurately; there should be more corrective measures imposed as authorized by the *Act* rather than automatic reprimand and pay forfeiture;
- informal discipline is too formal.

4.5 Consistency in Disciplinary Sanctions

Generally, the imposition of disciplinary sanctions is highly centralized in police departments. Normally only the chief or a few senior officers impose disciplinary sanctions. The fact that decision-making is only in a few hands in any one police force helps to control the risk of unwarranted disparity at least within that force. In the RCMP, informal sanctions are reviewed and approved at the regional division level. Formal sanctions are determined by adjudication boards which are normally composed of one legally trained officer from the Professional Standards Branch, headquartered in Ottawa, and two other officers from a neighbouring division. Obviously there is some room for disparity in informal discipline from one region to the next since final decision-making in regard to informal sanctions is regionalized. Likewise there is some room for disparity in format sanctions between one adjudication tribunal and another, although efforts are made to minimize this by ensuring that each tribunal has one full-time adjudicator from headquarters and ensuring that former board decisions are distributed to each division. As will be seen momentarily, the risk of disparity from one police force to another is much greater.

Even if discipline within a police force is highly centralized, the risk of disparity is increased when the legislative framework for discipline (1) does not set out the aims and purposes of disciplinary sanctions, (2) does not provide any guidance or guidelines as to the appropriate sanction in different types of cases, and (3) does not provide a list of aggravating and mitigating factors. In the police discipline survey, police chiefs and senior officers involved in discipline were asked whether in their opinion unwarranted disparity (i.e. similar cases in similar circumstances receiving different treatment) existed Within their force and in comparison to other forces. Table 3.2 indicates the combined opinion of RCMP discipliners and municipal/provincial police discipliners.

Table 3.2 - Unwarranted Disparity: Police Discipliners
(Total number of respondents: 93)

		Within your Force	In Comparison to Other Forces
1.	A lot	3.5%	13%
2.	Some	45.0%	36%
3.	Almost none	48.0%	16%
4.	Don't know	3.5%	34%
	TOTAL	100%	100%

Although few police discipliners think there is a lot of disparity in their own force, it is interesting that 45 per cent (42 of 93) think there is some disparity within their own force, while approximately 48% think there is almost none. If the RCMP respondents are looked at separately, 7.4% think there is a lot of unwarranted disparity within their own police force, another 48% think there is some disparity, while 40% think there is almost no disparity.

The estimates as to the extent of disparity when comparing one police department to another are considerably higher: 13% thought there was a lot of disparity, 36% that there was some, only 16% thought there was almost none, while 34% indicated that they did not know since they had no basis for making such a determination.

When the same question was posed to police association representatives and RCMP division representatives, the estimates of disparity were considerably higher, as might have been expected. Table 3.3 indicates the combined opinion of RCMP division staff relations representatives and municipal/ provincial police association representatives.

Table 3.3 - Unwarranted Disparity - Police Member Representatives
(Total number of respondents: 31)

		Within your Force	In Comparison to Other Forces
1.	A lot	22.5%	26%
2.	Some	64.5%	58%
3.	Almost none	6.5%	3%
4.	Don't know	6.5%	13%
	TOTAL	100%	100%

As Table 3.3 shows, 22.5% of police member representatives were of the opinion that there was a lot of disparity within their own police department and only 6.5% believed that there was almost none within their department. The estimates of disparity are slightly higher for RCMP division staff relations representatives than for municipal police association representatives.

One source of disparity (both in sentencing and in disciplinary sanctioning) is lack of guidelines. Another source of disparity is lack of information as to what sanctions other discipliners are imposing in similar cases. Provision of more information to discipliners about what other discipliners are doing will not, by itself, eliminate disparity. Experience in criminal law sentencing shows that this information can be ignored, and sometimes is, by sentencers who "do their own thing". Although such information does not guarantee uniformity, it is one important and necessary step toward reducing disparity.

The above opinions on disparity, including the responses from police chiefs and others who said that they had no basis for determining whether disparity exists between their police force and other police forces, suggest that there is a great need for the collection of disciplinary sanction decisions on a national basis and the dissemination of those decisions to police discipliners across the country. The Ontario Police Commission Reports provide one model for the type of digest which is needed on a national basis if greater consistency in police sanctions is to be attained.

Alternatively, such information could be collected and disseminated through a national data base, like CPIC. Perhaps this is a task for the Canadian Association of Chiefs of Police to initiate with the financial support and assistance of the various provincial police commissions.

The police discipline survey also asked respondents the following question:

> Do you have access to information on sanctions that have been applied in previous cases to determine whether the sanction in the present case is consistent with sanctions imposed in previous similar cases?
>
> Yes _____ No _____

The results are summarized in Table 3.4.

Table 3.4 - Access to Previous Decisions
(Total number of respondents: 123)

		Yes	No
1.	Municipal Police Chiefs (or senior disciplinary officers)	69%	31%
2.	RCMP officers and members involved in discipline	85%	15%*
3.	Police Association Representatives	53%	47%
4.	RCMP Division Staff Relations Representatives	40%	60%

(* The 15% "No" respondents in the RCMP were regional members, not members of the Professional Standards Branch in Ottawa, all of whom have access to the full judgment in all RCMP Adjudication Cases.)

It is surprising to note that 31 % of the municipal or provincial police discipliners did not feel they had access or sufficient access to previous sanction cases in order to ensure consistency in sanctions. Less surprising, 47% of the RCMP division representatives and 60% of the municipal police association representatives felt they had insufficient access to previous sanction cases in order to ensure consistency in sanctions. These data further confirm the need for a national police sanctions digest.

4.6 Miscellaneous Provision

There are other differences in the legislative framework for police discipline across the country that affect when and d disciplinary sanctions are imposed. These include the standard of

proof, time limitations for instituting disciplinary proceedings, double jeopardy and *res judicata* and issue estoppel.

(a) Standard of Proof

This varies from police act to police act. Under the old *RCMP Act* the standard of proof was proof beyond a reasonable doubt which was appropriate considering the penal nature of some of the disciplinary sanctions, while under the new *RCMP Act* (sub. 45.12(1)) the civil standard of proof "on a balance of probabilities" has been adopted. Under the *BC Regulation* (s. 23), the *Saskatchewan Regulation* (s. 1.15), and the *Manitoba Act* (sub. 27(2)) discipline may be imposed only if the misconduct is proven beyond a reasonable doubt, while section 61 of the *Ontario Police Services Act* adopts yet a third standard: proof upon "clear and convincing evidence". This standard of proof is greater than balance of probabilities but less than proof beyond a reasonable doubt.

(b) Time limitations

Under section 34 of the *BC Regulation*, no disciplinary proceedings shall be commenced more than six months after the alleged occurrence or more than three months after the discovery of the alleged occurrence, whichever is the later. Subsection 43(8) of the new *RCMP Act* provides that no disciplinary hearing can be initiated one year after the alleged contravention and identity of the person become known to the appropriate officer. Even this one year time limitation is often too short in cases where the RCMP Public Complaints Commission decides to hold a hearing.[49]

(c) Double Jeopardy

In *Wigglesworth*, the Supreme Court of Canada held that a person may be subject to both criminal punishment and a disciplinary sanction. Wilson J. quoted, with approval, the comments of Cameron J.A. in the Saskatchewan Court of Appeal:

> A single act may have more than one aspect, and it may give rise to more than one legal consequence. It may, if it constitutes a breach of the duty a person owes to society. amount to a crime, for which the actor must answer to the public... And that same act may have still another aspect to it. it may also involve a breach of the duties of one's office or calling, in which event the actor must account to his professional peers. For example a doctor who sexually assaults a patient will be liable, at one and the same time, to a criminal conviction at the behest of the State, to a judgment of damages, at the instance of the patient, and to an order of discipline on the motion of the governing council of his profession. Similarly a policeman who assaults a prisoner is answerable to the State for his crime., to the victim for damage he caused, and to the police force for discipline.[50]

Section 39 of the new *RCMP Act* clearly authorizes disciplinary proceedings regardless of a criminal court conviction or acquittal in regard to the same conduct..

> 39. (1) Every member alleged to have contravened the Code of Conduct may be dealt with under this Act...
>
> (b) whether or not the member has been charged with an offence constituted by, included in or otherwise related to the alleged contravention or has been tried, acquitted, discharged, convicted or sentenced by a court in respect of such an offence.

Although it is not a violation of principles of double jeopardy to impose both criminal and disciplinary sanctions for the same conduct, some police acts, on policy grounds, seem to prohibit this. For example, subsection 58(3) of the *Alberta Municipal Regulations* provides as follows.

> (3)(a) If the evidence produced during a disciplinary hearing indicates that the matter under consideration may constitute a criminal offence, the disciplinary hearing will be adjourned pending consideration that the accused be charged in criminal court
>
> (b) A disciplinary hearing will not be reconvened if a charge is proceeded with in criminal court regardless of the findings of the court.
>
> (c) The disciplinary hearing will reconvene and proceed as normal should there be no proceedings in criminal court[51].

These provisions must now be read in light of subsections 17(3) and 47(2) of the *Alberta Police Act*[52.]

(d) *Res Judicata* and Issue Estoppel

There is also uncertainty and variation across the country as to whether factual findings made in criminal proceedings are binding in disciplinary proceedings for the same conduct. There may be justification for holding that such factual findings are binding when the standard of proof is the same in both the criminal and the disciplinary proceedings. When the issue arose in *Fedoriuk*[53] under the old *RCMP Act*, one judge held that the factual finding in the criminal trial on the issue of intent to steal was binding on the disciplinary tribunal, another judge held it was not, and the third judge held that it was unnecessary to decide the issue in that case. In any event, the matter is now different under the new *RCMP Act* since the new standard of proof (balance of probabilities) is no longer the same as the criminal standard of proof beyond a reasonable doubt.

In British Columbia, where the standard of proof is the same in both criminal and disciplinary proceedings, subsections 10(3) and (4) of the *BC Regulation* provide as follows:

> (3) Where a member has been prosecuted in respect of an offence punishable on indictment or on summary conviction and has been acquitted, no disciplinary proceedings shall be taken under this regulation arising out of the same facts and circumstances.

(4) Subsection (3) does not apply where the disciplinary proceedings relate to separate and distinct issues from those tried in the criminal proceedings.

On the other hand, paragraph 39(1)(b) of the new *RCMP Act* allows for disciplinary proceedings regardless of an acquittal in criminal court in regard to the same conduct.

(e) Suspension Pending Disciplinary Hearings

Different policies on pre-disciplinary hearing suspensions with or without pay can render the degree of economic hardship of a disciplinary sanction quite different from one police force to the next. This matter has been fully canvassed in RCMP External Review Committee Discussion Paper 1.[54]

Chapter V

ANALYSIS OF GENERAL PRINCIPLES OF DISCIPLINARY SANCTIONING

5.1 Introduction

In Chapter 4, the aims and purposes of disciplinary sanctions in the context of the legislative framework for discipline were discussed. In this chapter the discussion will be on how these general principles are and ought to be applied in the context of specific cases. In general, police discipliners rely upon the arbitral jurisprudence on discipline in labour relations, modifying it as necessary to meet the unique aspects of police discipline. This body of arbitral jurisprudence is too extensive to thoroughly discuss in this chapter. For example, Brown and Beatty in their text, Canadian Labour Arbitration,[55] devote over 200 pages to the topic of discipline. Thus, this chapter highlights only the salient principles of disciplinary sanctions as well as various aggravating and mitigating factors.

5.2 Nature of Disciplinary Proceedings

In *Wigglesworth* v. *The Queen* the appellant police officer argued that the legal rights set out in section II of the *Canadian Charter of Rights and Freedoms*[56] apply to persons charged with a disciplinary offence. Section 11 of the *Charter* states that certain rights are available to persons "charged with an offence". The Supreme Court of Canada held that the word "offence" in section 11 refers to "criminal or penal offences" and not to disciplinary offences, unless those disciplinary offences are by their very nature criminal or penal or involve penal consequences.[57] The Supreme Court of Canada held that the rights in section 11 of the *Charter* did apply to major service offences under the old *RCMP Act* since the old *Act* provided for a truly penal consequence (i.e. up to one year's imprisonment upon conviction of a major service offence). However, it can be safely asserted that the rights in section 11 of the *Charter* do not apply to the new *RCMP Act* since the sanctions under the new *Act* do not involve penal consequences.

In coming to the conclusion that the rights in section 11 of the *Charter* do not normally apply to disciplinary proceedings, Wilson J., speaking for the entire Court on this point, stated that criminal or penal offences are matters of a public nature and they are "to be distinguished from private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity".[58]

In the cases of *Trimm* v. *Durham Regional Police Force*,[59] *Bumham* v. *Ackroyd*,[60] and *Trumbley and Pugh* v. *Metropolitan Police Force*[61] the Supreme Court of Canada held that disciplinary proceedings under the old *Ontario Police Act*[62] are "neither criminal in nature nor do they involve penal consequences".[63] The Supreme Court held that they are "matters essentially of a private nature between the officer and his superiors".[64] In these cases the Supreme Court also referred to the following comments of Morden J.A. who, in delivering the decision of the Ontario Court of Appeal in these cases, stated:

> In my view, a *Police Act* discipline proceeding is not a criminal or penal proceeding within the purview of s.11. The most serious consequence that can befall a police

> officer in such proceedings is the loss of his or her position and, while I do not minimize the seriousness of this consequence, it is a civil consequence and not punishment of a criminal nature. A police discipline matter is a purely administrative internal process. Its most serious possible consequence makes it analogous to a discipline matter in ordinary employer-employee relationships, even though the procedure governing it is clearly more formal. The basic object of dismissing an employee is not to punish him or her in the usual sense of this word (to deter or reform or, possibly, to exact some form of modern retribution) but rather, to rid the employer of the burden of an employee who has shown that he or she is not fit to remain an employee.[65]

Although the Supreme Court of Canada has declared that police discipline is neither criminal nor penal, formal police disciplinary procedures which are very akin to criminal procedures can leave an impression that disciplinary proceedings are still quasi-criminal. Likewise, fines and other monetary sanctions leave the impression that police discipline is largely a punitive as opposed to a corrective process. Traditionally police discipline has been punitive. There is evidence that police discipliners, like discipliners in the employment field generally, are moving toward increased reliance on positive or corrective discipline. This movement is slower in the police sector than in some other employment areas. The data in Table 1.1 (p. 16) shows that approximately 50% of municipal police discipliners think that punishment is always or usually an important disciplinary objective. The new approach to discipline under the new *RCMP Act* has perhaps had a beneficial effect on RCMP discipliners since only 30% of them still consider punishment to be always or usually important (Table 1.2, p. 17). Having said that, 30% is still a high figure; police discipliners need to be encouraged to more readily adopt the general trend in human resource management toward a system of non-punitive, positive, remedial discipline.

5.3 Justice and Fairness in Disciplinary Sanctioning

As a general principle of administrative law, police disciplinary tribunals have "a duty to act fairly", both procedurally and substantively.[66] For example, this duty to act fairly has been relied upon in Alberta in *Re Bachinsky and Sawyer*,[67] in British Columbia in *Joplin* v. *Chief Constable of the City of Vancouver*,[68] and by the Federal Court in regard to the RCMP in *Re Husted and Ridley and The Queen*,[69] to strike down as *ultra vires* regulations which denied police officers the right to legal counsel at disciplinary hearings. In *Joplin*, Chief Justice McEachern stated:

> I do not think it possible to treat any disciplinary proceedings under this disciplinary code (except those conducted formally on a "man to man basis" where no entry is made in an officer's record) as other than serious. In today's society, where career decisions must be made at an early age, and many of our citizens do not have a second chance, and where all policemen are assumed to be career officers, and where good conduct is obviously an important factor in promotion and therefore in salary, and where pension and other benefits depend in part upon salary in the closing years of a career, it is clearly untenable to argue that a recorded conviction for a disciplinary default -- even for using one naughty participle - is not serious. if a

> senior officer of this police force considers the complaint serious enough to engage this formal hearing procedure with its full panoply of legalities, then it is per se serious, and this is so regardless of the nature of the alleged offence or the maximum penalty which is recommended. I think right-thinking citizens would agree.[70]

In dismissing an appeal from the above case, the Court of Appeal specifically adopted the above comments by Chief Justice McEachern. He also stated:

> When society employs young men and women to maintain law and order in a sometimes unreasonable and irreverent society, it impliedly promises them justice and nothing else will suffice.[71]

Although spoken in the specific context of the right to legal counsel at disciplinary hearings, these words by Chief Justice McEachern properly express the importance of justice and fairness in all aspects of disciplinary sanctioning. Another principle of fairness in disciplinary sanctioning arose in the case of *College of Physicians and Surgeons of Ontario* v. *Petri*[72] where the Ontario Divisional Court held that a disciplinary tribunal should not substitute its own penalty for one proposed in a joint submission by the parties without first giving the parties the opportunity to make submissions on the more severe sentence being contemplated. Likewise, if a police disciplinary tribunal imposed a more severe sanction on a police officer than that sought by the presenting officer, then that would constitute a breach of fairness if the disciplined officer was given no notice that a more severe penalty was being sought and was given no opportunity to address the possible imposition of a more severe sanction.[73]

5.4 The Approach to Police Sanctioning

The case of *Wigglesworth*, though it arose under the old *RCMP Act*, can be used as a vehicle to demonstrate a number of weaknesses in the approach which is taken all too frequently in formal police discipline cases. The facts of the case are described by Wilson, J. as follows:

> The appellant was at all material times a constable of the R.C.M.P. On August 21, 1981, one Donald Kerr was brought to the R.C.M.P. detachment in Yorkton, Saskatchewan for a breathalyzer test. Kerr was taken into a room where he met the appellant.
>
> The appellant started to question Kerr concerning the incident giving rise to his arrest. He asked Kerr who was driving the car at the time. Kerr indicated that his sister was driving. The appellant suspected he was lying. He repeated the question a couple of times, receiving the same response each time. The appellant then grabbed Kerr, who was seated in a chair at the time, by the throat and pushed him against a wall. The grab around the throat was sufficient to cause a choking sensation to Kerr.
>
> After a few seconds the appellant questioned Kerr again as to who was driving the car. Kerr continued to maintain that his sister was driving. The appellant slapped

> Kerr across the face with his open hand and repeated the question. Kerr gave the same answer. However, after three or four slaps Kerr admitted that he had been driving the car. At no time did Kerr respond physically to the appellant's slaps. The defence has admitted, on these facts, that the appellant committed a common assault as defined in the Criminal Code. As a result of the assault Kerr suffered a sore throat, a ringing in his ears, and several minor marks on his face.[74]

Wigglesworth was found guilty of a major service offence and was assessed a penalty of a $300 fine. Wigglesworth was subsequently charged with criminal assault and found guilty and assessed an additional fine of $250. The RCMP service court held that something less than the severest penalty was called for in this case since Wigglesworth had an excellent record of service and the conduct was uncharacteristic of his normal performance.[75]

The sanction in this case, keeping in mind the mitigating factors mentioned above, could be compared to sanctions imposed for other forms of police misconduct, with similar mitigating circumstances, in order to determine police discipliners' opinions in regard to the relative seriousness of use of force in comparison to other forms of police misconduct. This notion of relative offence severity will be returned to later. The sanction in this case, as in most cases, does not reflect sufficient attention being paid to the principles of affirmative discipline corrective discipline and reparative discipline.

The principles of affirmative discipline were discussed in Chapter 2. A fine is principally a punitive sanction, rather than a positive sanction wherein the police officer reaffirms both orally and in writing his personal understanding of the importance of carrying out of police duties without the use of unnecessary force or violence and renews his solemn oath and commitment to do so in the future.

Secondly, the fine in this case is not remedial for the individual police officer or in terms of organizational or administrative practices. For example, a corrective sanction would require a closer examination into the factors which caused Wigglesworth to lose his cool in this case. If these factors related to some aspect of his character or personality then a corrective sanction would ensure that he received appropriate assistance, guidance and supervision in regard to correcting these matters. On the other hand, if certain organizational or administrative practices (e.g. double-shift, poor training, etc.) contributed to the misconduct, a remedial sanction would ensure that these practices were both acknowledged as part of the problem and recommendations made to correct or alter these practices.

Finally, imposing a fine in this case does not reflect any attention being paid to the important reparative aspects which a sanction in this sort of case should reflect. Most importantly, the sanction should involve an appropriate apology by the police officer to the citizen, and where appropriate some form of restitution or token compensation for the injury involved. Secondly, the citizen should be advised of all the circumstances which may have led the individual police officer to act out of character on this one occasion. Thirdly, a citizen should be advised of the disciplinary action which

the police force has taken. Of course this last point is contrary to the long-standing practice of the RCMP not to disclose the nature of the discipline to an aggrieved citizen.

Failing to disclose the nature of police sanctions to aggrieved citizens is bound to diminish rather than enhance the public trust which the RCMP and other police forces seek to maintain. Research has shown that the public are far less punitive in regard to the appropriate sentence in criminal law when they are fully apprised of all the facts of an individual case. No doubt this same phenomenon would apply in police discipline cases. Both the individual making the complaint and the public at large would be more satisfied as to the appropriateness of police sanctions if they were fully apprised of the sanction and all relevant factors considered in imposing that sanction. It can only be in a police force's best interest to take both an open and a reparative approach to police sanctioning, especially where the police misconduct involves a citizen complaint.

The approach of positive, corrective and progressive discipline which is increasingly emerging in the arbitral jurisprudence on employer-employee discipline can also be found in certain police discipline cases, although such cases are still far too infrequent.[76] It is time for police discipliners to turn away from punitive discipline and to embrace positive, corrective and remedial discipline.

5.5 Key Principles: Positive, Progressive Discipline, Rehabilitation and Ability to Perform Duties

As noted in Chapter 4, the main purpose of police discipline is to assist a police force to achieve its organizational objective of delivering effective and efficient police services to the community, keeping in mind that any disciplinary sanction imposed must be fair and just in the circumstances. This disciplinary objective can be best achieved by reliance on a system of positive, progressive discipline aimed at correcting deviant behaviour and remedying organizational or administrative practices which may have contributed to the misconduct. Recognition that correction and remedy are the first purposes of discipline is also a recognition of the current managerial theory that employees are the most valuable commodity of any organization. Punitive sanctions are neither in the employer's nor the employee's best interests. Dismissal normally represents the loss of a valuable, experienced employee and involves the cost of recruiting and training of a new employee. Thus correction is to be preferred. Although deterrence is important, deterrence must not be allowed to outweigh other factors such as correction and rehabilitation.[77]

The key issue in regard to disciplinary dismissal is whether the employee or police officer's conduct demonstrates that he or she is beyond rehabilitation and no longer fit to perform his or her functions. As Morden J.A. stated in *Re Trumbley and Fleming*:

> The basic object of dismissing an employee is not to punish him or her in the usual sense of this word (to deter or reform or, possibly, to exact some form of modern retribution) but rather, to rid the employer of the burden of an employee who has shown that he or she is not fit to remain an employee.[78]

These key principles of discipline are described by Brown and Beatty in the following words:

> Rehabilitative potential. The theory of progressive discipline, evolving from the duty to warn an employee of the seriousness with which the employer views her employment record, is simply one manifestation of the recent arbitral recognition of the correctional theme underlying industrial discipline. Very simply, by progressively increasing the severity of the discipline imposed for persistent misconduct it is expected that the employee will be given some inducement and incentive to reform her conduct. As one arbitrator has put it:
>
> One of the advantages to adopting a corrective disciplinary approach is that it enables the parties to know where they stand with each other. An employee who is subjected to corrective discipline knows that after receiving a warning he may receive a suspension and that after a suspension he may be discharged if he repeats an offence.
>
> ...
>
> Increasingly, and in a number of different contexts, various arbitrators have inquired into and ultimately relied upon the grievor's ability to conform to acceptable and expected standards of behaviour as a basis on which to ameliorate a disciplinary penalty. For these arbitrators, the common check-lists of mitigating factors "are but special circumstances of general considerations which bear upon the employee's future prospects for acceptable behaviour", which for them is "the essence of the whole corrective approach to discipline". Basic to this general approach is an assessment of the grievor's ability and willingness to reform or rehabilitate himself so that a satisfactory employment relationship can be reestablished, and of whether the grievor is "redeemable".... Thus, many arbitrators have explicitly examined and ultimately relied upon the rehabilitative potential of persons who, for example, had seriously threatened, or actually physically abused members of management, or engaged in an act of theft, as a basis for substituting a period of suspension for the discharge initially imposed.... This emphasis on the rehabilitative potential of the grievor seems particularly compelling in those instances where the arbitrator is satisfied that the employer's interest in protecting the integrity of its service can be satisfied by some sanction other than the dismissal of the employee in question.
>
> ...
>
> While many arbitrators now accept the idea that the rehabilitative theory of industrial discipline implies that the termination of an employee for just cause requires a finding that "the employment relationship has been so fundamentally breached as to render it devoid of any possible future viability", arbitral opinion is divided as to whether the theory may, in appropriate circumstances, "call for a remedial programme of discipline designed to reintegrate the employee into the workforce to his fullest potential".[79]

The issue of whether the police officer's misconduct demonstrates that he or she is no longer fit to perform the duties of a police officer is the key issue for both on-duty and off-duty misconduct. The issue of sanctions for off-duty conduct will be addressed later, but it should be noted at this stage that one of the five criteria set out in the *Millhaven*[80] case for determining when discipline is appropriate for off-duty conduct is the question of whether the conduct "renders the employee unable to perform his duties".

5.6 Special Status of Police Officers and Their Ability to Perform Their Duties

In police discipline cases, it is clear that police discipliners must and do take into account the special status of police officers as public office holders who must achieve and maintain the trust of the public if they are to effectively accomplish their functions and thus police officers are held to a very high standard of conduct in both their professional and private activities. In *Re Trumbley and Fleming*, Morden J.A. of the Ontario Court of Appeal observed that: "The police officer has voluntarily accepted a vocation entailing duties which are peculiar to it and essential to its proper performance, duties to which ordinary citizens are not subject."[81]

In *Fedoriuk*, the then Commissioner of the RCMP expressed these sentiments in the following words:

> It is an accepted fact that society demands a much higher standard of conduct from public office holders, especially those charged with enforcement of the laws of the land, than from the public at large. Uncompromising honesty, trustworthiness and integrity are paramount, and an obvious breach such as this clearly diminishes the trust which an individual can expect, either from the public whom he serves, his department or his peers. Unfortunately, the public's confidence in the Force as a whole is also affected by a demonstrated lack of integrity by one of its members.
>
> From the Force's perspective, trust is imperative.... A loss of credibility in the public's view, within the Force, and before the courts will seriously impair this member's effectiveness and render him unsuitable for service in the Force.[82]
>
> In *Re Ville de Granby and Fratemité des policiers de Granby Inc*. the arbitrator stated:
>
> The conduct of such a person, whether on or off duty, may be the subject of scrutiny. Such conduct, where it places in doubt the integrity, honesty or moral character of the police officer, may weaken his effectiveness, cause embarrassment to the police force of which he is a member, and may as such be quite incompatible with his position.[83]

The question of whether or not the police officer's conduct damaged the reputation of the police force is also one of the five *Millhaven* criteria which are used to determine whether or not a disciplinary sanction ought to be imposed for off-duty misconduct. However, as noted earlier in the

case of *Re Communauté urbaine de Montréal and Fratemité des policiers de Montréal*,[84] there is not, nor should there be, any automatic presumption that a criminal conviction for off-duty conduct (such as impaired driving as in that case) compromises the prestige and effectiveness of the police force and contributes to a loss of public confidence and esteem for the police force. In a similar vein, in *Fedoriuk*,[85] the Federal Court of Appeal held that it is an error in law to hold that a conviction for an offence such as off-duty shoplifting automatically warranted dismissal. The Court held that the Commissioner must examine the particular circumstances of each offence in order to determine whether the offence committed significantly affected the officer's ability to carry out his duties. In *Wm. Scott and Co. Ltd and Can. Food and Allied Workers*,[86] arbitrator Weiler noted "that arbitrators no longer assume that certain conduct taken in the abstract, even quite serious employee offences, are automatically legal cause for discharge."

In determining whether certain misconduct would likely damage the reputation of the police force, the proper test is whether a reasonable person who was fully informed of all the relevant facts would be of the opinion that the misconduct in question brings discredit on the police force. Support for this test can be found in the arbitral decision *Re Emergency Health Services Commission and CUPE, Local 873*.[87] In this case, the grievor, an ambulance driver/attendant was dismissed as a result of an off-duty sexual assault (inappropriate sexual touching) of a 13 year old babysitter. The mitigating factors included the fact that the grievor was extremely intoxicated at the time, was undergoing severe financial and marital problems, accepted responsibility for his conduct, felt a deep sense of distress and remorse, had no previous criminal record, had a good work record and had psychiatric and psychological reports indicating that there was no likelihood the offence would be repeated. The Health Services Commission argued that as the statutory agency responsible for ambulance services, "it must maintain, both as an entity and through its employees, the complete trust and confidence of the citizens of this province."[88] The Commission further argued that it could not afford to continue to employ a person who is perceived as capable of sexual molestation of an ambulance patient. The Commission argued that to do so would endanger or jeopardize the trust, credibility and responsibility necessary to carrying out its statutory duties and responsibilities. Thus the Commission argued that the grievor's dismissal was justified because "the overwhelming likelihood and certainty is that the employer's reputation would surely suffer if the grievor were returned to employment"[89] even though there was no reason to expect a repetition of the offence.

Arbitrator Black agreed with the Commission's concern about its character and reputation, but he noted that "adjudicators must exercise particular care that an employer has not over-reacted in expressing an excessive concern with its public reputation."[90] He stated that "to support a discharge, the offending off-duty misconduct must be of such a serious nature as to demonstrate that the employee's action is so reprehensible, having regard for all of the circumstances, that it is wholly incompatible with the continuation of the employment relationship."[91] In the circumstances of this case he concluded that discharge was too severe and substituted a sanction of eight months suspension without pay. in coming to this conclusion, he also stated:

> It goes without saying that the grievor showed a serious error in judgment, both in becoming so severely intoxicated and in his assault on the young babysitter. However, I find absolutely no reason to believe that the poor judgment exhibited by

> the grievor in the particular circumstances in which it arose would carry over into his professional life. Sound judgment in one's calling or profession is developed through training, experience and the objectivity which comes with that. One gauge of a person's professional judgment in the future is that person's professional judgment in the past. The evidence supports that the grievor has an exemplary work record over his years of employment. There is no basis on the evidence to indicate that the grievor, either in the past or by reason of this incident, lacks the necessary judgment to properly carry out his professional duties.
>
> ...
>
> The employer's perception of the public's concern must also incorporate not only the act of misconduct but the circumstances under which that misconduct occurred. Would a reasonable person, having knowledge of the circumstances which gave rise to this misconduct, view the retention of the grievor by the employer in its employ in such a way so as to endanger the high level of trust, credibility and responsibility which the employer is entitled to expect. I do not think so. The employer has not provided any evidence to support Its perception that in these circumstances, the public would have a loss of confidence or unforgiving attitude toward the commission if the grievor was reinstated to his employment."[92]

The two main assertions in this case are: (1) that the employer's perception of a loss of public trust must be based on the test of a fully informed, reasonable member of the public and (2) that there must be some evidence available to the employer upon which to make this assessment. In his decision in *Re Madame Vanier Children's Services and Ontario Public Service Employees' Union*, arbitrator Verity stated:

> To establish just cause, the employer cannot base its case on suspicion or supposition. There must be a factual basis for the assumption that the grievor's continued employment poses a risk to the employer and its clientele. I am satisfied that at the time of the grievor's dismissal, there was no evidence of any nexus between the grievor's adolescent sexual misconduct and his ability to function properly as a family therapist. The positive psychological assessment by Dr. Langevin is compelling evidence that there never was any such nexus. I am satisfied that the grievor's anomalous sexual misconduct did not extend beyond his adolescent years.[93]

Arbitrator Verity also noted that public image is a nebulous concept and then quoted from arbitrator Shime in *Re IAFF, Local 626 and Borough of Scarborough*, as follows:

> "Image" is an intangible concept about which there is much debate; it is an elusive matter held in high repute by some and looked at with considerable cynicism by others. The matter of image is a legitimate business interest under which a company may act, but again a board of arbitration should not act on a simple subjective view

> of what an employer conceives to be his image, because the matter of image is no longer a question of individual opinion. Modern social science has enabled the measurement of image by objective evidence, and as I have indicated it would be preferable if parties would submit such evidence at an arbitration.[94]

The issue of "harm to the reputation of the police force" needs to be carefully examined in the context of each case. Police discipliners should not automatically resort to this criteria as a justification for a severe sanction without some evidence that damage to the reputation of the force has occurred and is so great that a severe sanction is warranted. The assumption that the reputation of the police force is damaged by the misconduct of an individual police officer can be easily overstated. Seldom will the isolated misconduct of one police officer result in the loss or substantial lowering of a good police force's overall reputation. The public and others are normally intelligent enough to appreciate that the individual misconduct of one police officer ought not to be visited upon the reputation of the entire police department.

More importantly, even if there has been some small incremental damage to the reputation of the police force, this damage can often be fixed by both an open and reparative system of discipline. In addition, the issue of whether or not a police officer's misconduct has so substantially affected his or her ability to perform the duties of a police officer that there is no other recourse but to discharge him or her must be carefully examined in the context of each case. Such a conclusion should not be reached without a thorough evaluation of the rehabilitative potential of this individual officer. Various aggravating and mitigating circumstances, to be discussed later, will bear upon the determination of this important issue. There is good reason to believe that some police discipliners readily assume that certain types of police misconduct automatically lower a police department's reputation and esteem in the community and that the only appropriate response is dismissal, notwithstanding the rehabilitative potential of the individual police officer. This issue can perhaps best be examined by looking at the special case of off-duty shoplifting by a police officer. Ho,*ever, before doing so, I intend to comment upon the criteria for sanctioning off-duty conduct as well as the major aggravating and mitigating circumstances which ought to be taken into account in determining an appropriate and just sanction.

5.7 Principles for Sanctioning Off-Duty Conduct

Two frequently quoted arbitral decisions set out the traditional tests for determining when and if off-duty conduct ought to be subject to disciplinary sanctions. In *Re U.A.W, Local 195 and Huron Steel Products Co. Ltd*., arbitrator Reville stated:

> It has been held in many arbitration cases that under normal circumstances an employer is only properly concerned with an employee's due and faithful observance of his duties on the job. However, no hard and fast rule can be laid down, and in each case the determination of three questions of fact will determine the issue. These are:
>
> (1) Was the employee's conduct sufficiently injurious to the interest of the employee.
> (2) Did the employee act in a manner incompatible with the due and faithful discharge of his duty?
> (3) Did the employee do anything prejudicial or likely to be prejudicial to the reputation of the employer?...
>
> If one or more of the above questions must be answered in the affirmative on all the evidence, then the company is properly concerned with the employee's conduct regardless of whether it occurred on or off the company property or in or out of working hours, and depending on the gravity of that conduct, the company will be justified in taking appropriate disciplinary action.[95]

In *Millhaven* arbitrator Anderson stated:

> In other words, n the discharge is to be sustained on the basis of a justifiable reason arising out of conduct away from the place of work, there is an onus on the Company to show that:
>
> (1) the conduct of the grievor harms the Company's reputation or product;
>
> (2) the grievor's behaviour renders the employee unable to perform his duties satisfactorily;
>
> (3) the grievor's behaviour leads to a refusal, reluctance or inability of the other employees to work with him;
>
> (4) the grievor has been guilty of a serious breach of. the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees;

(5) places difficulty in the way of the Company properly carrying out its function of efficiently managing its Works and efficiently directing its working forces.[96]

The criteria in the above two decisions have been cited and relied upon in many other arbitral decisions. In *Re Air Canada and I.A.M., Lodge 148,* arbitrator Andrews held that "it is not necessary for a company to show that all five of the criteria in the Millhaven Fibres case have followed on the employee's conduct; rather, any one of the consequences named may warrant discipline."[97] In *Re Government of the Province of British Columbia and B.C.G.E.U.*, arbitrator Black stated: "I would concur with the comment in Re Air Canada, supra, that it is not necessary for an employer to show that all five of the criteria set out above followed on the employee's conduct. Depending on the degree of impact, any one of the consequences named may warrant discipline."[98] Likewise, in *Re Flewwelling and Adjudication Board*,[99] the Federal Court of Canada indicated that it is not necessary for all five of the *Millhaven* criteria to be present.

The first *Millhaven* criterion is harm to a company's (or a police force's) reputation, which has already been discussed. It should also be noted that in the context of off-duty criminal convictions, lack of newspaper publicity does not necessarily mean there is no harm done to a company or police force. In *ICG Utilities*, a case where the grievor, a meter-reader, was convicted for off-duty sexual assault upon a 13 year old gid, the arbitration board stated:

> His access to the homes of customers, often with keys, his presence at times when frequently the only persons present in the home may be the young, the ill, the elderly or the otherwise relatively defenceless, render it vitally important the public be able to accept him in their homes with confidence. The mere fact that the newspapers did not pick up the case at this time does not ensure that later disclosure might not occur. The employer cannot be expected to sit on a powder-keg fearing the worst.[100]

The second *Millhaven* criterion -- whether the employee's off-duty conduct renders that employee unable to perform his/her duties satisfactorily -- has already been discussed to a certain extent as well. In the context of police discipline, the nature of the misconduct and the circumstances surrounding it will be highly relevant in determining whether the misconduct is a momentary aberration, and out of character, or whether it demonstrates an endemic weakness in the individual officer's character which is incompatible with the continued exercise of police duties which require judgement, integrity, impartiality and fairness. For example, misconduct which has occurred over a sustained period of time, as opposed to a one-time incident, may point to a character flaw inconsistent with police duties and responsibilities.

The third *Millhaven* criterion requires little comment here. It normally arises when the misconduct involves substantial moral turpitude (such as sexual deviance) or is indicative of uncontrolled or unpredictable violence.

The fourth *Millhaven* criterion is in fact simply an illustration of the first criterion - injury to the reputation of the company or police force. The fourth criterion simply specifies that this injury

occurs by committing a serious breach of the *Criminal Code*. Although some early arbitral decisions assumed that any off-duty, serious breach of the *Criminal Code* automatically caused damage to the employer's reputation, it is now clear in arbitral decisions that the employer must actually establish that a conviction for such off-duty conduct does in fact injure the company's reputations.[101] The issue of what constitutes a serious breach of the *Criminal Code* is also a matter which is open to differing interpretations. In many cases, arbitrators look to the sentence imposed by the court as a measure of the seriousness of the breach, rather than simply looking at the offence charged. Likewise, the use of pre-trial diversion or the imposition of an absolute or conditional discharge, which in law means that there is no conviction for a criminal offence,[102] should be highly relevant in determining whether there has been a serious breach of the *Criminal Code*.

The fifth *Millhaven* criterion would be satisfied if a company or police force established that a person's misconduct rendered him or her so untrustworthy that the person would have to be kept under close supervision permanently and that such supervision would be either impossible or, d possible, a significant burden on the employer. However, since close supervision is one of the corrective sanctions under the new *RCMP Act*, the need for supervision, at least for a limited period of time, should not normally be considered an excessive burden in RCMP discipline cases.

5.8 Aggravating and Mitigating Circumstances

The list of aggravating and mitigating circumstances most commonly quoted in the arbitral jurisprudence on discipline arise from the case of *Re United Steel Workers of America, Local 3257* and the *Steel Equipment Co. Ltd*.[103] These factors were also applied in the Alberta Law Enforcement Appeal Board decision in Saunders where the chairman listed the factors in the following words:

> Changing the wording to make them applicable to police forces these read as follows:
>
> 1) the previous good record of the police officer.
>
> 2) the long service of the police officer.
>
> 3) whether or not the offence was an isolated incident in the employment history of the police officer.
>
> 4) provocation.
>
> 5) whether the offence was committed on the spur of the moment as a result of a momentary aberration due to strong emotional impulses or whether the offence was premeditated.
>
> 6) whether the penalty imposed has created a special economic hardship for the police officer in the light of his particular circumstances.

7) evidence that the rules of the Police Force, either unwritten or posted, have not been uniformly enforced thus constituting a form of discrimination.

8) circumstances negativing intent, e.g., likelihood that the police officer misunderstood the nature or intent of an order given to him and as a result disobeyed it.

9) the seriousness of the offence in terms of the policy of the Police Force and the obligation of the Police Force.

10) any other circumstances which the Board should probably [sic -- "properly"] take into consideration [e.g. failure to apologize after being given an opportunity to do so].[104]

These factors are discussed in greater detail in Brown and Beatty.[105] Although the above list is reasonably comprehensive, it is not exhaustive. Other factors include frankness and co-operation in the investigation of the disciplinary complaint, remorse, mental or emotional stress, alcohol or other drug problems, and the likelihood of recurrence of such misconduct by this officer or other officers. In addition, there are some mitigating or aggravating circumstances which are unique to the nature of the misconduct or to the personal circumstances of the disciplined officer.

What the above list of aggravating or mitigating factors fails to do, and what fails to happen in many disciplinary decisions, is to relate these aggravating and mitigating circumstances to the aims and purposes of disciplinary sanctions. For example, factors 6 and 7 above are relevant to achieving a fair and just sanction, whereas the other factors are relevant to the question of whether the employee is rehabilitatable or whether the misconduct is such that the employment relationship has been irrevocably destroyed.

5.9 Off-Duty Theft: A Special Case?

Prior to the decision of the Federal Court of Canada in *Fedoriuk*[106] the RCMP's position on off-duty theft was clear. It resulted in automatic discharge regardless of mitigating circumstances. In Fedoriuk the appellant police officer was convicted of off-duty shoplifting and received an absolute discharge in criminal court. In regard to the disciplinary charge, the RCMP review board recommended that Fedoriuk be discharged noting that it was the consistent view of the Commissioner that there was no room in the Force for an individual who was found guilty of theft. The Commissioner accepted the recommendation that Fedoriuk be discharged stating: "I am compelled to say theft by a member sworn to uphold the law cannot help but significantly affect the proper performance of duty by that member."

The Federal Court interpreted the Commissioner's position and remarks as representing a belief that "in all cases, and regardless of the circumstances in any particular case, a breach of the law by a member would, automatically, and without anything further, satisfy the requirements"[107] for dismissal. The Federal Court held that this was an error and added: "the Commissioner is

required to examine the particular circumstances of the offence committed in each individual case, and to satisfy himself, after such examination, that the offence committed was of so serious a nature as to significantly affect the proper performance of his duties by the member in question."[108]

It is clear, that the RCMP Commissioner now applies the principle set out by the Federal Court of Appeal in *Fedoriuk*. For example, in a disciplinary decision in June 1989, the Commissioner stated:

> Notwithstanding the gravity of any misconduct, including theft, it is still incumbent upon every adjudicator (and I do not exclude myself to take into account all the circumstances and relevant factors in order to arrive at an appropriate and just decision.[109]

However, the results tend to be the same. Off-duty shoplifting results in dismissal even where there are many mitigating circumstances. The only factor to date which has been recognized as sufficiently extenuating to reverse a recommendation for discharge is if the theft was caused by a level of stress well above normal.[110]

The RCMP's current approach to off-duty shoplifting can be seen by closer examination of ERC Decision D4, referred to above. In that case, the accused was charged with theft of a sanitary napkin holder worth $1.79 which he did not pay for when he went through the checkout counter. He did pay for the remaining items in his possession which amounted to $16.72. He explained that he was both upset about his wife's possible miscarriage and was embarrassed to pay for the sanitary napkin holder since the two tellers were female. The criminal charge of theft was withdrawn. At the disciplinary hearing the appellant pleaded guilty. The trial officer imposed a fine of $500 and a recommendation for dismissal. It is significant to note that the appellant's commanding officer was not in favour of dismissal and indicated that the appellant "is not one to be cast away. He is a good man and has potential on the Force."

The Commissioner upheld the trial officer's recommendation for dismissal. The Commissioner stated:

> At the outset let me make h abundantly clear that I share the view held by most members of society that any theft or taking of property without consent by a police officer is serious misconduct which frequently attracts the most severe sanctions available to a disciplinary tribunal. Why? Simply because there are some forms of misconduct which by their very nature and character are incompatible and inconsistent with the duties of public office holders.
>
> In taking an article without consent a member places his or her own personal reputation in jeopardy and, as well, involves the general reputation of the Force. It is my view that in order for any law enforcement agency to effectively carry out its mandate there must exist an underlying element of mutual trust and confidence between the public and that agency's members. Society has come to expect a high

> standard of honesty, trustworthiness and integrity from its police officers. Misconduct involving the taking of property belonging to another serves to shake that confidence. This is understandable because police officers frequently find themselves in positions where they must deal with the property of others in situations where there is little or no supervision.
>
> In order to ensure that society's expectations are met this Force imposes stringent standards, admittedly high, on Its members. Yet these standards are not so high as to be unattainable, as attested to by the fact that the vast majority of our members live up to them every day. Thus misconduct involving theft must be viewed with apprehension and circumspection for it strikes at the very cornerstone of the trust and faith placed in an individual member by the public he or she has chosen to serve.
>
> Notwithstanding the gravity of any misconduct, including theft, it is still incumbent upon every adjudicator (and I do not exclude myself to take into account all the circumstances and relevant factors surrounding the misconduct in order to arrive at an appropriate and just decision. There may well be mitigating factors brought to the attention of the tribunal which are important enough to influence the final disposition of a case. It is unlikely that any two cases would be mirror images of each other and I suggest that there may be a wide variety of extenuating circumstances which could be applicable.[111]

As noted earlier, the only circumstance which has been sufficiently extenuating to reverse a recommendation for discharge has been if the theft was caused by a level of stress well above normal. That did not exist in this case and the Commissioner found the other extenuating circumstances were insufficient to overrule the recommendation for discharge.

It should be noted that there were a large number of mitigating factors in this case. The conduct did not show either planning or premeditation, nor was the conduct spread over an extended period of time. The appellant police officer was both prompt and consistent in explaining his conduct. He cooperated fully in the investigation. He did not attempt to concoct an explanation for his behaviour. He had an unblemished disciplinary record and had received good performance evaluations. His commanding officer was of the view that he had potential in the force and should not be dismissed. The following work day after his apprehension, he apologized to his colleagues for any embarrassment which his conduct might cause to them. In addition it was clear that he was remorseful in regard to his behaviour. A psychiatric report indicated that this was a temporary aberration due to anxiety and embarrassment and was not conduct which was likely to be repeated. Although his explanation about embarrassment was not a very strong mitigating factor, it did tend to show that he did not take the items primarily as a matter of personal gain. This is particularly so in light of the fact that the item taken was a value of $1.79 and he paid for other items to the value of $16.72.

Off-duty theft appears to be treated as a special case by the RCMP and will, in all but the most unusual of cases, result in dismissal. This approach seems to be inconsistent in several ways

with the general principles of sanctioning discussed in this paper. First, this approach reflects an assumption that "once a thief, always a thief". Although trust is a cornerstone of police relations, this approach assumes that one act of theft renders a police officer beyond rehabilitation, and beyond trust ever again. Such an approach does not take into account that an act of theft, like many other forms of misconduct, can be an isolated, impulsive act, out of keeping with the employment record and general character of the individual. In this respect, the opinion of the Ontario Police Commission in *Sack* makes a good point.[112] In that case, a police officer, while off duty, switched price tags on an item in order to obtain a lower price at the checkout counter. The Commission held that "this officer should not be dismissed for a singular, stupid act of human fertility" in circumstances where he had 21 years of unblemished service and the conduct was out of character (his trustworthiness and good character were attested to by many members of the community).[113]

Second, the RCMP approach to off-duty theft reflects an assumption that dismissal is necessary to maintain public trust in the honesty and integrity of the police force. That assumption does not reflect the true opinion of reasonable citizens who are fully informed of all the mitigating circumstances including the fact that the theft is a one-time incident, totally out of character and not indicative of a general pattern of dishonesty. A corrective sentence, short of discharge, would not bring discredit upon the police force in the eyes of fully informed, reasonable citizens in such cases.

Third, the RCMP approach to off-duty theft seems inconsistent with, and harsher than, the Force's approach to other forms of misconduct which also involve a form of dishonesty or false representation. In these other cases, one act of dishonesty or false representation is not treated as irrevocable proof that the offending police officer is beyond future trust.

Fourth, the RCMP approach to off-duty theft is inconsistent with the trend in recent arbitral jurisprudence to discipline on-duty employer-related theft (and off-duty theft where relevant) by a sanction other than discharge. For example, in regard to employer theft, Brown and Beatty state: "in the vast majority of the more recent awards, after examining the particulars of the circumstances surrounding the grievance, arbitrators have come to the conclusion that the competing interests of the employer and grievor could be reconciled in a way and with a penalty less severe than discharge."[114]

Finally, the RCMP approach to off-duty theft may be inconsistent with its approach to other types of misconduct. As mentioned earlier,[115] Wigglesworth was reprimanded and fined $300 for choking and slapping an accused during an interrogation. This sanction was justified by the RCMP service court on the grounds that the conduct was out of character and that Wigglesworth had an excellent service record. If a one-time incident of excessive force can be seen as out of character and therefore not calling for discharge, then why cannot a one-time incident of shoplifting be treated as out of character and not calling for discharge. Indeed, in the scheme of things, many citizens may be more concerned about the police use of excessive force, or the denial of constitutionally protected rights by the police, than they are about whether or not an otherwise good police officer has been involved in a one-time incident of shoplifting.

Chapter VI

CONCLUSIONS

In this Discussion Paper, information has been collected on current laws and practices in regard to police disciplinary sanctions. This information suggests that there are a number of aspects of police disciplinary sanctions which are worthy of further study and discussion by police administrators. What follows is a brief summary of some of the potential problems in regard to police sanctions and some possible ideas for addressing these problems.

1. More thought, time and resources should be spent on finding ways to avoid the need for discipline. Models of police management which lower the likelihood of police misconduct need to be thoroughly studied and considered.

2. Traditionally, discipline has been punitive. The problem with discipline as punishment is that it is both negative and relatively ineffective. Thus discipline that is affirmative, remedial and reparative is preferable. Although the new *RCMP Act* gives discipliners the opportunity to use remedial sanctions, the *Act* does not state, as a general principle, that remedial sanctions should be used in preference to punitive sanctions.

3. There is no legislative statement as to the competing aims and purposes of police sanctions. Sanctions may be imposed for various purposes, including punishment, individual deterrence, general deterrence, re-education or rehabilitation, maintenance of internal order, or to ensure public confidence as to the high standards and general integrity expected of police officers. Differences of opinion on the relative importance of these competing aims and purposes can lead to drastically different sanctions in otherwise similar cases. Data from the police discipline survey confirms that police discipliners do in fact hold substantially different opinions on the aims and purposes of police sanctions. It is now generally accepted that Parliament should give some direction to sentencing judges by providing a legislative statement of the aims and purposes of sentencing. If this is appropriate for sentencing, is it not also appropriate for police disciplinary sanctions?

4. In general, the various police acts and regulations provide very little guidance as to what type of disciplinary sanction is appropriate for various types of police misconduct nor do these acts or regulations generally specify what factors should be considered aggravating or mitigating circumstances. Data from the police discipline survey indicates that police discipliners hold very different views as to the relative importance of certain factors and circumstances as aggravating or mitigating matters. Consequently, there is considerable room for disparity in the application of disciplinary sanctions, particularly between different police forces. One need only compare, for example, the treatment of a conviction for impaired driving while off duty to see this disparity between police forces. Consideration should be given to formulating a legislative list of aggravating or mitigating factors.

5. In many police acts and regulations the disciplinary sanctions are purely punitive. The new *RCMP Act* has recently introduced some corrective disciplinary sanctions, but the range of sanctions needs to be expanded. This opinion was confirmed in the police discipline survey.

6. One source of disparity in police sanctions is a lack of information as to what sanctions other discipliners are imposing in similar cases. Although such information will not guarantee uniformity, it is an important step to reducing disparity. There is a need for the collection of decisions on a national basis and the dissemination of those decisions to police discipliners across the country by means of a police sanctions disciplinary digest or data base.

7. Until recently, police discipline has been viewed by both discipliners and recipients as largely punitive. Recent Supreme Court of Canada decisions have indicated that police disciplinary sanctions are not to be considered penal in nature but rather are of a regulatory, protective or remedial nature. In general, insufficient attention has been paid to affirmative, corrective and reparative discipline. For example, a fine or other monetary penalty is principally a punitive sanction as opposed to being affirmative, remedial or reparative. The notion of progressive discipline is well entrenched in arbitral jurisprudence on employer/employee discipline, and the ideas of positive and remedial discipline are gaining increasing acceptance. These principles should be increasingly considered in police discipline cases.

8. The police acts and regulations do not specifically indicate or mandate that the principal purpose of discipline is to correct deviant behaviour. In examining police discipline cases it is not apparent that rehabilitation is the primary concern in police sanctioning. In particular more attention needs to be paid to the rehabilitative aspects of sanctioning. This is particularly so in the case of off-duty theft. In the case of serious forms of police misconduct, the principal focus should be on whether the police officer has irrevocably demonstrated that he or she is no longer fit to perform police duties.

9. It is important that police officers maintain the trust of the public in terms of high standards of police behaviour. When police misconduct relates to interaction with the public, it is important that the public be informed of the ultimate disposition in the matter. Indeed, in most cases, disciplinary sanctions should reflect an attempt to achieve reconciliation or reparation between the police officer and the affected citizen or citizens.

10. In the absence of a legislative statement of the aims and purposes of disciplinary sanctions, it would be useful for individual police departments to develop their own statements. Such statements might include the following principles:

(a) the main purpose of police discipline is to assist a police force to achieve its organizational objective of delivering effective and efficient police services to the community, also remembering that any disciplinary sanction imposed must be fair and just in the circumstances;

(b) where organizational or administrative factors are a significant contributing factor to the misconduct, priority should be given to correcting these factors rather than blaming and disciplining the individual officer;

(c) where disciplinary action is necessary, an approach which seeks to correct and educate a police officer should precede one that seeks to blame and impose punishment;

(d) when disciplinary action is necessary, the least onerous sanction appropriate in the circumstances should be chosen; formal discipline should only be resorted to where informal discipline is clearly inadequate;

(e) a disciplinary sanction should never be disproportionate to the gravity of conduct being sanctioned;

(f) both aggravating and mitigating circumstances must be taken into account in determining a just sanction;

(g) deterrence of other police officers and maintenance of public respect should only be pursued as sanctioning objectives within the context of what is otherwise a just and proportionate sanction;

(h) disciplinary sanctions should be consistent (similar cases with similar circumstances should receive similar sanctions).

Whether such statements are introduced by police departments will depend upon the attitudes within the police community towards the development of a consistent approach towards sanctioning. The introduction of individual statements could be the first step towards the development of a legislative statement of the aims of disciplinary sanctions.

ENDNOTES

1. Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure Within the Royal Canadian Mounted Police, Report (Ottawa: Information Canada, 1976) (Chairman, Judge Marin) [hereinafter Marin Commission Report].

2. R.S.C. 1970, c. R-54, now R.S.C., 1985, c. R-10 [hereinafter old *RCMP Act*].

3. Marin Commission Report, *supra*, note 1, at 133-5.

4. R.S.C., 1985, c. R-10, as am. R.S.C., 1985, c.8 (2d supp.), ss. 41-43 [hereinafter new *RCMP Act*]

5. See Marin Commission Report, *supra*, note 1, at 139.

6. *Ibid*. at 140.

7. B.C. Reg. 330/75, as amended [hereinafter *BC Regulation*].

8. R.S.M. 1987, c. L75 [hereinafter *Manitoba Act*].

9. J. Redeker, Discipline: Policies and Procedures (Washington: Bureau of National Affairs, 1983).

10. *Ibid*. at ch. 2.

11. *Ibid*. at ch. 3.

12. *Ibid*. at 39.

13. See D. Bayley, Forces of Order: Police Behavior in Japan and United States (Berkeley: Univ. of California Press, 1976). See also W. Ames, Police and Community in Japan (Berkeley: Univ. of California Press, 1981); J. Haley, "Confession, Repentance and Absolution" in Wright & Galaway (eds.), Mediation in Criminal Justice: Victims, Offenders and Community (London: Sage Publications, 1989) at 195. A description of these studies may be obtained on request from the RCMP External Review Committee's Director of Research.

14. Bayley, *ibid*. at chs. 4 & 5; Ames, *ibid*. at chs. 2, 3, 8 & 9.

15. A. Verma & T. Kochan, "Two Paths to Innovations in Industrial Relations: The Case of Canada and the United States" (1990), 41 Labour Law Journal 60; R.L. Heenan, "New Technologies and Employment Law: The United States and Canadian Positions" (1988), 9 Comparative Labour Law Journal 357-68; P. Kumar & M.L. Coates, "Industrial Relations in 1989: Trends and Emerging Issues" in P. Kumar et al (eds), The Current Industrial Relations Scene in Canada 1989 (Kingston: Industrial Relations Centre, 1989); J. Richards, G. Mauser & R. Holmes, "What Do Workers Want? Attitudes Towards Collective

Bargaining and Participation in Management" (1988), 43 Relations Industrielles 133; C. Ichniowski, J.T. Delaney & D. Lewin, "The New Resource Management in U.S. Workplaces: Is It Really New and Is It Only Nonunion?" (1989), 44 Relations Industrielles 97.

16. R. Apostle & P. Stenning, Public Policing in Nova Scotia, (A Research Study Prepared for the Royal Commission on the Donald Marshall, Jr. Prosecution, 1988) at 105-112; A. Normandeau and B. Leighton, A Vision of the Future of Policing in Canada: Police-Challenge 2000 (Ottawa: Ministry of Solicitor General, 1990) at 92-96; P. Southgate (ed.), New Directions in Police Training (London: Home Office Research and Planning Unit, 1988).

17. *Supra*, note 1, at 20-35 & 111-131.

18. *Supra*, note 2, ss. 34 & 35.

19. *Supra*, note 7, s. 31.

20. *Municipal Police Discipline Regulations*, Sask. Reg. 92/81, [hereinafter *Saskatchewan Regulations*].

21. See, for example, *Manitoba Act*, *supra*, note 8, sub. 24(4).

22. R.R.O. 1980, Reg. 791 [hereinafter *Regulation 791*] made under *Police Act*, R.S.O. 1980, c. 381 [hereinafter old Ontario *Police Act*].

23. *Municipal Police Disciplinary Regulation*, Alta Reg. 179/74 [hereinafter *Alberta Municipal Regulation*] as am. *Municipal Police Disciplinary Amendment Regulation*, Alta Reg. 79/78 [hereinafter *Alberta Amendment Regulation*]; see now *Police Service Regulation*, Alta Reg. 356/90 [hereinafter *Alberta Police Regulation*].

24. *Trimm* v. *Durham Regional Police Force*, [1987] 2 S.C.R. 582, 45 D.L.R. (4th) 276, at 281. See also *Burnham* v. *Ackroyd*, [1987] 2 S.C.R. 572,45 D.L.R. (4th) 309; *Trumbley & Pugh* v. *Metropolitan Toronto Police*, [1987] 2 S.C.R. 541, 45 D.L.R. (4th) 318. The imprisonment provisions under the old *RCMP Act* did constitute penal consequences: *Wigglesworthy* v. *The Queen*, [1987] 2 S.C.R.5 41, 45 D.L.R. (4th) 235, but those provisions have since been repealed. All subsequent references are to D.L.R.

25. *Wigglesworth*, *ibid*. at 252.

26. See, for example, Law Reform Commission of Canada, A Report on Dispositions and Sentences in the Criminal Process: Guidelines (Ottawa: Information Canada, 1976); Report of the Canadian Sentencing Commission. Sentencing Reform: A Canadian Approach (Ottawa: Minister of Supply and Services Canada, 1987); Department of Justice, Sentencing:

Directions for Reform and A Framework for- Sentencing. Corrections and Conditional Release: Directions for Reform (Ottawa: Minister of Supply and Services Canada, 1990); K. Jobson & G. Ferguson, "Toward a Revised Sentencing Structure for Canada" (1987), 66 Can. Bar Rev. 1.

27. M.E. Banderet, "Discipline at the Workplace: A Comparative Study of Law and Practice" (1986), 125 International Labour Review 261.

28. *Supra*, note 25.

29. See, for example, Marin Commission Report, *supra*, note 1, at 114:

> The philosophy underlying the present system of discipline is found in the following remarks from the Force's Administration Manual:
>
> > "No group of people can work together without some form of organized control and discipline. The nature of our profession, as peace officers, demands that we set for ourselves a much higher standard of conduct than is expected of a member of the general public, and that we be willing to live by a much stricter code of self-discipline. We are mindful that our everyday actions, both on the job and in private life, are judged by the public in our role as peace officers, not as private citizens."

See also s. 39 of the RCMP Code of Conduct, *RCMP Regulations*, 1988, SOR/88-361 [hereinafter *RCMP Regulations*], which provides:

> 39.(1) A member shall not act or conduct himself or herself in a disgraceful or disorderly manner that brings discredit on the Force.
>
> (2) Without restricting the generality of the foregoing, an act or conduct of a member that
>
> > (a) is prejudicial to the impartial performance of the member's duties, or
> > (b) results in a finding of guilty of an indictable offence or an offence punishable on summary conviction under any statute of Canada or a province or an ordinance of a territory,
>
> is a disgraceful act or conduct.

30. Marin Commission Report, *supra*, note 1, at 140.

31. *Ibid*. at 139.

32. *Supra*, note 2, ss 25 & 26.

33. Dismissal (s.38) and restitution not exceeding $1000 (s. 37) were punishments available for either major or minor service offences. The other punishments for major and minor service offences (s.36) were as follows:

Major service offence	Minor service offence
(a) imprisonment for a term not exceeding one year;	(a) confinement to barracks for a period not exceeding thirty days;
(b) a fine not exceeding five hundred dollars;	(b) 9 pursuant to section 38, the convicting officer recommends dismissal, a fine not exceeding three hundred dollars;
(c) loss of pay for a period not exceeding thirty days;	(c) a fine not exceeding fifty dollars;
(d) reduction in rank;	(d) loss of seniority; or
(e) loss of seniority; or	(e) reprimand.
(f) reprimand.	

34. *RCMP Regulations, supra*, note 29, ss. 38-58.

35. *Supra*, note 4, ss. 41 and 43.

36. *Ibid*. sub. 43(1).

37. The types of informal disciplinary action (s. 41) are:

(a) counselling;
(b) recommendation for special training;
(c) recommendation for professional counselling;
(d) recommendation for transfer;
(e) direction to work under close supervision;
(f) subject to such conditions as the Commissioner may, by rule, prescribe, forfeiture of regular time off for any period not exceeding one work day; and
(g) reprimand.

The types of formal sanctions (subs. 45.12(3) & (4)) are:

(a) recommendation for dismissal from the Force, if the member is an officer, or dismissal from the Force, if the member is not an officer;
(b) direction to resign from the Force and, in default of resigning within fourteen days after being directed to do so, recommendation for dismissal from the Force, if the member is an officer, or dismissal from the Force, if the member is not an officer;
(c) recommendation for demotion, if the member is an officer, or demotion, a the member is not an officer; or
(d) forfeiture of pay for a period not exceeding ten work days; or
(e) in addition to or in substitution for the above, any of the informal disciplinary actions listed in paras 41 (1) (a) to (g).

38. This remains so even under the new legislation in. Saskatchewan (*The Police Act*, R.S.S. 1978, c. P-15); Ontario (*Police Services Act, 1990*, S.O. 1990, c. 10, s. 61 [hereinafter Ontario Police Services Act]); and Québec, *An Act respecting police organization and amending the Police Act and various legislation*, L.Q. 1988, c. 75, as am. L.Q. 1990, c. 27 [hereinafter new Québec Police Act], s. 131 of which provides:

> In determining the penalty, the ethics committee shall take into account the gravity of the misconduct having regard to all the circumstances, and the ethical record of the police officer.

39. (1987), 19 RCMP A[djudication] D[ecisions] 177 (S[ervice] T[rail]); aff'd (1988), 21 A.D. 122 (Comm[issione]r).

40. (1987), 20 A.D. 27 (S.T.).

41. (1987), 20 A.D. 126 (S.T.).

42. (1987), 19 A.D. 135 (S.T.); (1988), 21 A.D. 71 (S.T.); (1988), 24 A.D. 35 (S.T.).

43. (1986), 2 O.P.R. 711.

44. (1989), 2 O.P.R. 814.

45. 8 C.L.A.S. 35 (5 June, 1987).

46. See, for example, *BC Regulation*, *supra*, note 7, s. 33; *Alberta Police Regulation*, *supra*, note 23, s. 17; Ontario Police Services Act, *supra*, note 38, s. 61. It should be noted, though, that sub. 17(3) of the *Alberta Regulation* does provide for special training on professional counselling in addition to the other penalties (including dismissal).

47. For example, under the *BC Regulation*, *ibid*., the maximum suspension without pay is 5 days (as it is also under s. 1.23 of the *Saskatchewan Regulations*, *supra*, note 20), and under the

Alberta Police Regulation, *ibid*., para. 17(1)(d), the maximum suspension without pay is for a period of 80 hours, presumably 10 days.

48. For example, under s. 30 of the Manitoba *Law Enforcement Review Act*, *supra*, note 8, a police officer may be disciplined by suspension without pay for up to 30 days or forfeiture of pay (leave or days off) up to a maximum of 10 days. Under s. 61 of the *Ontario Police Services Act*, *supra*, note 38, a disciplinary suspension for up to 30 days without pay may be imposed, or a forfeiture of up to 20 days leave, or up to 5 days pay. Under s. 130 of the new Québec *Police Act*, *supra*, note 38, a suspension without salary not exceeding 60 working days may be imposed as a disciplinary sanction; there is no provision for forfeiture of leave or pay. Subsection 5(3) of the Nova Scotia

Police Regulation, N.S. Reg. 101/88, provides for a fine not exceeding one month's pay or a suspension without pay for not more than thirty days. The *Royal Newfoundland Constabulary Regulations*, Nfld. Reg. 75/85, is unique in that s.16 authorizes suspension without pay for a period not exceeding six months.

49. RCMP Public Complaints Commission, Annual Report 1989-90 (Ottawa: Minister of Supply and Services, 1990) at 81-83.

50. *Wigglesworth* v. *The Queen* (1984), 7 D.L.R. (4th) 361 (Sask. C.A.), at 365, quoted in *Wigglesworth*, *supra*, note 24 at 256.

51. *Supra*, note 23, sub. 58(3); there is no similar provision in the *Alberta Police Regulation*, *ibid*.

52. S.A., c. P-12.01.

53. *Fedoriuk* v. *The Commissioner of the Royal Canadian Mounted Police*, [1989] 2 F.C. 400, 54 D.L.R. (4th) 168 (C.A.). In *Lutes* v. *Com'r of RCMP*, [1985] 2 F.C. 326, Urie J. suggests that an acquittal of theft charges in criminal court is binding on the Commissioner as to whether the offence was committed.

54. RCMP External Review Committee, Suspensions -- A Balanced View, Discussion Paper 1 (Ottawa: Minister of Supply and Services Canada, 1989).

55. D. Brown & D. Beatty, Canadian Labour Arbitration, 3d ed. (Aurora, Ont.: Canada Law Book Co., 1990) [hereinafter Brown & Beatty].

56. Part 1 of the *Constitution Act, 1982*, being schedule B of the *Canada Act 1982* (U.K.), 1982, c.11 [hereinafter the *Charter*].

57. *Supra*, note 24 at 250-4.

58. *Ibid*. at 251.

59. *Supra*, note 24.

60. *Supra*, note 24.

61. *Supra*, note 24.

62. *Supra*, note 22.

63. *Trimm* v. *Durham Regional Police Force*, *supra*, note 24, at 281.

64. *Ibid*. at 282, quoting *Re College and Niagara Regional Police Com'n* (1983), 142 D.L.R. (3d) 655 (Ont. H.C.), at 658.

65. *Re Trumbley and Fleming*, (1986) 29 D.L.R. (4th) 577 (Ont. C.A.) at 576-77, quoted with approval in *Trimm*, v. *Durham Regional Police Force*, *supra*, note 24, at 311 and in *Trumbley & Pugh* v. *Metropolitan Toronto Police*, *supra*, note 24, at 319.

66. See e.g. *Martineau* v. *Matsqui Institution Disciplinary Board* (No. 2), [1980] 1 S.C.R. 602, 50 C.C.C. (2d) 353, 106 D.L.R. (3d) 385. In *Wigglesworth*, *supra* note 24, the Supreme Court of Canada held that the rights in s.11 of the *Charter* apply to criminal and penal offences but do not apply to disciplinary offences (unless they involve penal consequences). But the Supreme Court indicated that this did not mean that the principles of fundamental justice guaranteed by s. 7 of the *Charter* were also inapplicable to disciplinary proceedings. Speaking for the majority, Wilson J. stated (at 250):

> For this reason it is, in my view, preferable to restrict s.11 to the most serious offences known to our law, *i.e.* criminal and penal matters and to leave other "offences" subject to the more flexible criteria of 'fundamental justice" in s. 7.

67. (1973), 14 C.C.C. (2d) 401, 43 D.L.R. (3d) 96 (Alta S.C.).

68. (1982) 2 C.C.C. (3d) 396,144 D.L.R. (3d) 285 (B.C.S.C.); aff'd (1985) 19 C.C.C. (3d) 331, 20 D.L.R. (4th) 314 (B.C.C.A.).

69. (1981), 58 C.C.C. (2d) 156 (F.C.).

70. *Supra*, note 68, 2 C. C. C. (3d) at 409.

71. *Ibid*. at 411.

72. (1989), 37 Admin. L.R. 119 (Ont. Div. Ct.).

73. See External Review Committee [hereinafter ERC] Decision in File No. 2500-90-002 D15.

74. *Supra* note 24, at 241-42.

75. 4 A.D. 1 (S.T.).

76. See, for example, ERC Decisions in File Nos. 2500-90-004 D17 and 2500-90-002 D15.

77. This principle was applied in ERC Decision File No. 2500-90-002 D15.

78. *Supra*, note 65, at 577.

79. *Supra*, note 55, at para. 7:4422, footnotes removed.

80. *Re Millhaven Fibres Ltd, Millhaven Works*, and *Oil, Chemical and Atomic Energy Workers Int'l, Local 9-670* (1967), 1 (A) Union-Management Arbitration Cases 328 (Anderson) [hereinafter *Millhaven*].

81. *Supra*, note 65, at 577.

82. *Supra*, note 53, at 405.

83. (1981), 3 L.A.C. (3d) 443 (Frumkin), at 445.

84. *Supra*, note 45.

85. *Supra*, note 53, at 409.

86. [1977] 1 Can. L.R.B.R. 1 (Weiler).

87. (1988), 35 LA.C. (3d) 400 (Black).

88. *Ibid*. at 405.

89. *Ibid*. at 407.

90. *Ibid*. at 409.

91. *Ibid*. at 409-41 0. For two cases where it was held that off-duty sexual assault warranted discharge, see *Re ICG Utilities and Energy & Chemical Workers Union* (1986), 25 L.A.C. (3d) 206 (Bowman) [hereinafter *ICG Utilities*] and *Re Overnighter Foods and Retail Clerks' Union, Local 1518* (1987), 28 L.A.C. (3d) 393 (McCall).

92. *Ibid*. at 412-13.

93. (1988), 5 L.A.C. (4th) 225 (Verity), at 236.

94. (1972), 24 L.A.C. 78 (Shime), at 85.

95. (1964), 15 L.A.C. 288 (Reville), at 289.

96. *Supra*, note 80, at 329.

97. (1973), 5 L.A.C. (2d) 7 (Andrews), at 8.

98. (1984), 15 L.A.C. (3d) 329 (Black), at 338.

99. (1985), 24 D.L.R. (4th) 274 (F.C.A.).

100. *Supra*, note 91, at 221.

101. Brown & Beatty, *supra*, note 55, para. 7:3424, n. 5.

102. Criminal Code, R.S.C., 1985, c. C-46, s. 736.

103. (1964), 14 L.A.C. 356 (Reville), at 356-58.

104. *Saunders and the City of Edmonton Police Force*, Alberta Law Enforcement Appeal Board, 2 May 1984, at 4.

105. Brown & Beatty, *supra*, note 55, para. 7:4400 ff.

106. *Supra*, note 53.

107. *Ibid*. at 409.

108. *Ibid*.

109. Decision of the Commissioner of the RCMP, 23 June 1989, p. 8, in ERC Decision File No. 320089-001 D4, where the recommendation of the Chairman of the ERC not to impose discharge was not followed by the Commissioner [hereinafter ERC Decision D4].

110. Decision of the Commissioner of the RCMP, 6 April 1989, in ERC Decision File No. 2400-88-001 D2.

111. *Supra*, note 109, at 7-8.

112. (1987), 2 O.P.R. 784 (O.P.C.).

113. *Ibid*. at 784.3.

114. Brown & Beatty, *supra*, note 55, para. 7:3310. See also para 7:3000, n. 12, and para. 7:4422, n. 12.

115. See section 5.4 of this document.

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NOTES