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# **Standing Committee on Public Safety and National Security**

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**EVIDENCE**

**Wednesday, October 17, 2012**

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**Chair**

**Mr. Kevin Sorenson**



## Standing Committee on Public Safety and National Security

Wednesday, October 17, 2012

• (1535)

[English]

**The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)):** Good afternoon, everyone.

We are beginning a few moments late today. We just had a vote after question period in the House of Commons, and bus connections being what they are, some of our members may not be here yet. We do have a quorum, so we will begin.

This is meeting number 52 of the Standing Committee on Public Safety and National Security, on Wednesday October 17, 2012.

I would like to begin our meeting today by paying tribute and extending best wishes to Lori Bowcock, the Canadian border guard who was shot at the Peace Arch border crossing in Surrey, British Columbia, on Tuesday.

This is the first time in Canadian history that one of our border guards has been shot in the line of duty, and our committee is aware of the dangers and the risks that our Canada Border Services guards face every day. We acknowledge their bravery and commend them for protecting our country. Certainly our best wishes and our prayers are with Ms. Bowcock.

Today we are continuing our consideration of Bill C-42 an act to amend the Royal Canadian Mounted Police Act.

In our first hour we will hear from the Commission for Public Complaints Against the Royal Canadian Mounted Police. Mr. Ian McPhail is the commission's interim chair.

Our committee thanks you for attending today.

Also appearing with him is Mr. Richard Evans, senior director of operations; and Ms. Lesley McCoy, legal counsel, executive director's office.

We thank you for your presence here today. We look forward to your comments, and we invite them at this time.

**Mr. Ian McPhail (Interim Chair, Commission for Public Complaints Against the Royal Canadian Mounted Police):** Thank you, Mr. Chair.

First of all, I would like to thank you and the members of the committee for this opportunity to provide the observations of the CPC with respect to Bill C-42.

Both Mr. Evans and Ms. McCoy have worked very closely with me in examining Bill C-42 and its effect on the commission. I will keep my comments brief.

The work of the Marin and McDonald commissions of inquiry in the 1970s and 1980s formed the basis of the current model of civilian review of the RCMP, established in 1988. Since that time, a succession of parliamentary reports, blue ribbon task forces, and public inquiries have sought to improve on the original model, calling for stronger and more effective civilian review of the RCMP.

[Translation]

The RCMP is a large organization with a diverse and complex mandate and jurisdiction.

[English]

The integrated nature of its operations with other law enforcement agencies adds to this complexity, and its presence in virtually every corner of this country and abroad is unique in law enforcement circles. All of this serves to increase the visibility of the organization and its members' contacts with the public, thereby providing ever-widening opportunities for public criticism.

[Translation]

That is the backdrop against which Commissioner Paulson identified the serious challenges facing the RCMP.

[English]

He has suggested that the organization is on the brink of losing the public trust it needs to do its job effectively.

Today it is a widely accepted view that a strong, credible, and independent civilian review mechanism is essential to maintaining that public trust and cementing the resulting public confidence in any policing organization. It is for that reason that the RCMP and the public need a robust review regime that has the necessary authorities and resources to independently investigate and assess the facts and render credible findings when concerns are expressed by the public regarding the manner in which the RCMP is fulfilling its responsibilities.

The review regime must be able to offer constructive, remedial recommendations that address concerns both about the conduct of RCMP members in the execution of their duties and about policy, procedural, and training gaps that risk contributing to systemic problems.

[Translation]

I believe that Bill C-42 satisfies these requirements to a great extent.

[English]

It sets out new authorities, which will assist the new Civilian Review and Complaints Commission, or CRCC, in providing an enhanced level of remedial review. The way in which these authorities are addressed in the legislation may at first appear complex. In my view, this complexity is for the most part a necessary reflection of the current legal landscape and is in many cases consistent with procedures adopted by both the commission and by the RCMP to compensate for gaps or ambiguities in the existing legislation.

The new authorities provided for in Bill C-42 arise in five key areas. First, the bill clearly sets out the CRCC's right to access to information held by the RCMP and to determine what information is relevant to an investigation or review. Although in recent times, the RCMP has demonstrated increased cooperation with the commission in this regard, this has not always been the case. The clear definition in Bill C-42 of the CRCC's right to access RCMP information will remove ambiguity and a potential source of conflict between the two bodies. In cases where conflict nonetheless arises, the legislation provides a dispute resolution mechanism, which offers an alternative to a lengthy and expensive court process.

• (1540)

Second, the bill gives the CRCC the authority to self-initiate reviews into specified activities of the RCMP. This will allow the new commission to identify problems and suggest improvements to policies and procedures in advance of public complaints or emergency or crisis situations that may affect public confidence in the RCMP.

Third, the CRCC will have the ability to summon witnesses, compel oral statements, and examine records, all without having to take the extraordinary step of calling a public hearing.

Fourth, Bill C-42 enables the CRCC to work cooperatively with the provinces that contract for RCMP policing services. The new commission will be able to share information and reports with provincial ministries and provincial counterparts whenever appropriate. It will also have the authority to conduct joint investigations, reviews, or hearings with other law enforcement review bodies. I believe Bill C-42 responds in large measure to these requirements.

Finally, the bill provides the new commission with more control over the complaint process. For example, under the existing legislation there is no time limit on making a complaint. Bill C-42 imposes a one-year time limit for making a complaint while providing for the ability to extend time limits for complaints and reviews where reasonable.

While these enhancements go a long way in addressing many of the weaknesses in the current review regime, I do have some observations that the committee may wish to consider.

The first of these, which admittedly I raise out of self-interest, is the issue of immunity of the commission chair. Bill C-42 offers some immunity to CRCC members in the exercise of their powers and duties, yet no equivalent immunity is provided to the CRCC chairperson. I believe this could be easily addressed. I know I would be grateful, as would my successors, I'm sure, not to have the spectre of jail time hanging over my head every day I come to the office.

The second issue I would like to raise relates to the provisions in the bill that give the RCMP commissioner or his delegate the ability to refuse to investigate a complaint that the CRCC chair has determined is in the public interest to investigate. Under the existing RCMP Act, the RCMP does not have that ability: a chair-initiated complaint must be investigated. The justification for this limitation is plainly evident. The credibility of any civilian review process will be lost if the agency subject to review is in a position to control when investigation may or may not occur. I believe this could be easily resolved with a simple amendment.

My third issue of concern is that while the bill requires the CRCC to protect privileged information it receives from the RCMP, it does not require the RCMP to identify information as privileged. The privileged nature of the information may not be obvious on its face, especially given that the definition of privilege in the bill is non-exhaustive. The commission recognizes the importance of safeguarding privileged information. However, to ensure these safeguards are properly applied, the RCMP should be required to notify the commission when it is providing it with privileged information.

• (1545)

Finally, it is a generally accepted principle that for civilian review to be effective, it must be timely. The commission has adopted this principle and imposed on itself strict time limits for all phases of the complaint process. It publicly reports annually on its performance in respect of those time limits.

I am pleased to see that this concept of service standards for the CRCC is incorporated in Bill C-42. I believe service standards would be a good idea for the RCMP as well.

These observations aside, I am of the view that Bill C-42 codifies in many ways a number of practices adopted by the RCMP and the commission in recent years. I would argue that these practices are evidence of the RCMP's growing support for external review and its recognition that we're working toward the same objective—a more accountable and more trusted RCMP.

This recognition has certainly contributed to the effectiveness of the commission's work during my time as interim chair of the commission. I assure you that there has been no shortage of work.

In addition to responding to the ever-increasing volume of contacts with the public about RCMP member conduct, the commission has responded to a number of high-profile incidents such as the in-custody deaths of Raymond Silverfox, John Simon, and Clay Willey, and the actions of the RCMP in the context of the G-8 and G-20 summits.

The commission also completed a full review of RCMP policing services in the Yukon, and we continued our yearly analysis and reporting on the RCMP's use of conducted energy weapons.

The commission is currently conducting an investigation into the RCMP's handling of allegations of workplace harassment. In the context of that investigation, we have reviewed approximately 1,000 RCMP files and 70 individual public submissions regarding the issue.

In examining this information, we are looking at how the RCMP responds to complaints regarding harassment in the workplace and whether their policies are adequate to deal with those complaints. We anticipate completing our report near the end of the calendar year.

I am very proud of all of this work. I look forward to the CRCC continuing such work and being able to do even more with enhanced authorities and regularized funding. As you know, for the past several years the CPC has relied on year-to-year interim funding to carry out its mandate. This has made it particularly challenging to maintain the commission's strategic focus while ensuring a full response to significant emerging issues. I am of the view, however, that the enhanced authorities set out in Bill C-42, along with a modest increase and stabilization of funding, will set the new CRCC on firmer ground and allow it to accomplish even more for the RCMP and for Canadians.

I would be happy to respond to any questions you may have.

Thank you.

**The Chair:** Thank you very much, Mr. McPhail.

We'll move quickly to the first round of questioning.

We'll go to Ms. Bergen, please, for seven minutes.

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

Thank you, Mr. McPhail, for being here. Thank you as well to you and your staff for the good work you do in serving Canadians and serving the RCMP and public safety.

I have a very direct question that I'd like to ask you. Can you tell me if Bill C-42 will give the new complaints commission the ability to deal with harassment?

**Mr. Ian McPhail:** Absolutely it will. I'll just outline what the commission is currently doing and how C-42 would make a difference. The commission is currently conducting a public interest investigation into allegations of workplace harassment in the RCMP. We have all seen many articles in the media about this.

The investigation is examining the thoroughness and impartiality of the RCMP's investigation of harassment allegations, whether policies were adhered to, and whether they are adequate to deal with allegations of workplace harassment.

Approximately 70 individual submissions were received by the commission following the announcement of the investigation and a public call for submissions. The CPC also received over 1,000 files from the RCMP related to harassment issues between February 2005 and November 2007. The commission has had three experienced investigators reviewing all of these files.

We anticipate completing our report near the end of the calendar year.

Let me just put it on the record that the RCMP has cooperated absolutely fully with the commission in providing whatever information the commission has requested.

The new provisions in Bill C-42 would ensure that the commission is able to conduct its investigation even if this level of cooperation is not present.

I hope that is helpful.

• (1550)

**Ms. Candice Bergen:** Yes. Thank you.

Basically what you are saying is that the main difference will be that you will have access to information that you possibly don't currently have, even though, as you said, the RCMP is being cooperative. It would give you the ability, hypothetically, if that cooperation weren't there, to access the information required.

**Mr. Ian McPhail:** Exactly. The commission would have that access as a right.

**Ms. Candice Bergen:** Great, thank you.

I have another question. The media recently reported that two of your employees were laid off as part of our government reduction exercise. Can you please tell us about those layoffs?

**Mr. Ian McPhail:** Very simply, I've heard those media reports as well. The fact is that the opposite is true. There have been no layoffs as a result of the government deficit reduction strategy. The employee numbers at the CPC are approximately 60.

We conduct ongoing reviews in terms of trying to make our operations as efficient as possible. In the course of that review, we concluded that there was one position in corporate services that was really redundant. We're in discussions with the particular individual, and I imagine that it will be properly resolved.

What I would like to tell you too is that we're also very actively engaged in working to ensure that the commission has the necessary increased depth among its staff, particularly in the areas of operations and investigations, to comply with its requirements under C-42.

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

**The Chair:** You have two minutes.

**Ms. Candice Bergen:** Thank you.

You mentioned the information part of being able to summons information and get information under the new piece of legislation. I'm wondering about witnesses. Could you again explain what you don't have access to right now in terms of information? That would include witnesses and documentation. What pieces of information are you not able to access now that you will be able to access under the new bill, and how will that assist you?

**Mr. Ian McPhail:** The present RCMP Act gives the commission the power to compel a witness or to require the production of a document in the course of a public inquiry. But that's not something we do or would wish to do frequently. It's cumbersome and expensive. Bill C-42 will give the commission the power to compel witnesses, to require the production of documents or information as part of a regular investigation as of right.

• (1555)

**Ms. Candice Bergen:** Thank you very much.

**The Chair:** Thank you, Ms. Bergen.

We'll now move to the opposition side and to Mr. Scott. Welcome here.

**Mr. Craig Scott (Toronto—Danforth, NDP):** Thank you, Mr. Chair, and thank you, Mr. McPhail, for your presentation. I do apologize for missing the better part of it. I had to present a bill. I've been well briefed on what you've said, though, and I have a feeling I'll be covering some new ground. I'm going to try to get through three to four questions, if you could help me in that.

Proposed subsection 45.74(2) in Bill C-42 speaks of the new commission having to suspend an investigation upon the request of the RCMP commissioner. Now I'm not going to assume you're necessarily an expert on all the legalities of this future bill, but—

**Mr. Ian McPhail:** That's why Ms. McCoy is here.

**Mr. Craig Scott:** Exactly. You may have an opinion on this because it's pretty clear it has to be suspended upon request if the Commissioner of the RCMP is of the opinion that the commission's investigation interferes with an ongoing criminal investigation.

From your own experience, do you see this as a significant restriction on the independence of the new commission, or do you see this as an entirely appropriate provision, assuming for the moment that nothing is said about any recourse the commission could have once the commissioner sends in that request? I'm wondering if you think there should be some reviewability of the commissioner's request to stop the investigation.

**Mr. Ian McPhail:** Very simply, I see the RCMP as the subject matter expert. The RCMP, more than anybody else, is going to be aware of whether an investigation or a review has the potential to interfere with an ongoing criminal investigation.

Frankly, I think such a restriction is perfectly justified, because I think it's important to remember that the review of any civilian review or complaints body can take place after the investigation has been completed. So it's not necessary to step in at an early stage and risk causing difficulties for an investigation.

**Mr. Craig Scott:** Thank you.

Your point seems to be, and I think it's a good point, that it doesn't oust the jurisdiction; it just delays the jurisdiction.

**Mr. Ian McPhail:** Exactly.

**Mr. Craig Scott:** For that reason, would you see any need for any kind of a challenging mechanism or a reviewability mechanism? The reason I ask is that we may have misunderstood the testimony, but public safety officials on Monday suggested that if the chair of the commission disagrees with the commissioner's request, then he or the commission can go to court to seek to overturn that.

I'm wondering if you think that's feasible, if that's correct, if your legal advisers can help me on that. If it's correct, do you think that's a desirable mechanism, or would you prefer to see it end with the text as is, which is that the commissioner asks, it stops, and that's the end of it?

**Mr. Ian McPhail:** It's quite true that there is a remedy, which is judicial review. That would be a pretty extraordinary remedy.

Richard, I can think of only one instance where there has been a long ongoing investigation where that was an issue.

**Mr. Richard Evans (Senior Director, Operations, Commission for Public Complaints Against the Royal Canadian Mounted**

**Police):** Yes, we have had some long-standing investigations that have taken 10 years or more. They've actively investigated criminality, but as Mr. McPhail says, when you look at the jurisdiction between investigating criminal offences and doing a review of public complaints, it's quite easy for the commission to do its work at the conclusion.

The other element that's important is the commissioner is required to give reasons, so there's a relatively serious threshold. First, it can't just be that we think it might interfere. It has to be that it would compromise or seriously hinder our investigation, and he has to give public reasons.

**Mr. Craig Scott:** A very good point.

**Mr. Richard Evans:** The reasons would be—

**Mr. Craig Scott:** Actually I want to confirm that. It just says "reasons", so you would interpret that as meaning reasons that must be made public.

**Mr. Richard Evans:** Not necessarily. The legislation doesn't say that, but our reports do end up becoming public at times.

**Mr. Craig Scott:** Okay. It's interesting, though, because as a policy matter, you'd think those reasons should be made public; otherwise there would be an accountability problem.

Am I correct?

• (1600)

**Mr. Ian McPhail:** I think that's a fair comment. The more public the process is, the better.

**Mr. Craig Scott:** Mr. Chair, how much time do I have?

**The Chair:** You have another minute.

**Mr. Craig Scott:** Thank you.

We also know that the new commission will indeed have greater access to information than the existing commission, including access to privileged information. But the RCMP commissioner does have the ability to invoke a number of provisions, which could lead to a long process before the final decision, about whether or not the commission can get access to certain forms of privileged information.

In terms of that cutback on the access to privileged information, it does appear not to go as far as the Brown task force recommended should be the case, and certainly not as far as SIRC's ability in the context of CSIS to look at privileged information without there being a gatekeeper function.

I'm wondering whether you see this as justified, and if you see it as justified—that it's less than SIRC's access—why would it be justified?

**Mr. Ian McPhail:** I would say that the Commissioner of the RCMP has the right to withhold access to privileged information but that the commission can challenge that. And essentially, Bill C-42 provides a fairly straightforward dispute resolution process.

**Mr. Craig Scott:** Can I stop you there? I think you've given the answer to that. I accept that it's a good answer.

The problem is that the process is at least five or six steps, and the final step for the commission is, again, to go to court. There's a serious concern that yes, this is clear and straightforward, but it's very cumbersome and time-consuming. There's a bit of a worry that the deck is stacked in favour of the commissioner, partly because the commissioner knows what the information will be that he's trying to prevent the commission from seeing. The commission won't know what they're asking for exactly.

Don't you see a problem there?

**The Chair:** Very quickly.

**Mr. Ian McPhail:** Very quickly, the commission has a surprisingly good knowledge of what information it's looking for. Many of the commission's investigators are former senior RCMP members who know what's in or should be in the files.

**The Chair:** Thank you very much, Mr. Scott and Mr. McPhail.

We'll now move back to the government side, to Mr. Norlock, please, for seven minutes.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Thank you, Mr. Chair.

Through you to the witnesses, thank you for appearing today.

I have two questions. I think what I'll do, in order to afford you the opportunity to take as much time with either one that you wish...I have two basic questions.

The first one is fairly simple and straightforward. Does Bill C-42 ensure the independence of the chair and the commission?

Second, as we know, the provinces that contract RCMP policing services have expressed concerns about the accountability of the RCMP, and they've indicated their interest in having a greater role in a compliant and review regime within their respective jurisdictions.

In your view, does Bill C-42 address their concerns?

**Mr. Ian McPhail:** I'm very pleased to answer both of those questions.

First of all, in terms of independence, Bill C-42, in my opinion, actually increases the independence of the commission by giving it the expanded powers that I discussed earlier, and in addition, as a practical matter, flowing from Bill C-42 will be stabilized and modestly increased funding.

It's also interesting how the increased cooperation and responsibilities towards the contracting provinces also contribute to the independence of the commission, because when the commission has to report and justify itself to additional bodies, the commission is thereby, by that very process, given increased autonomy.

In terms of how Bill C-42 responds to the concerns of the contracting provinces, it does so in a number of ways. To begin with, when a complaint is received, a notice of that complaint will be sent to the review agency in the appropriate province. Copies of all the reports will be provided to the policing minister in the appropriate province. This is particularly beneficial, because—remembering how the RCMP is really acting in seven of the ten provinces as the provincial police force as well as the national police force—when a complaint is made that may be quite newsworthy, it's only

reasonable that the provincial authorities understand how the commission has investigated and what findings it's made, what recommendations it's made. At the present time, the commission can't do that, so I think that's actually a big step forward.

Most importantly, policing itself has become more complex in recent years. There are many more joint policing operations. Just to pick an example out of the air, I can think of one where an integrated operation between the RCMP operating as the provincial police force in British Columbia worked with the Vancouver Police Department. Assuming—and this didn't happen—that a review were necessary or that complaints had been received in an instance like that under the new legislation, the CPC, or the CRCC as it will become, will be able to work jointly with its provincial counterpart in investigating that. So the provincial review body is brought right in as a full partner to the review and investigation.

● (1605)

**Mr. Rick Norlock:** Thank you.

Would the provincial entity or the complaints commission in each of the individual seven provinces be able to initiate a complaint? If they had a concern that hadn't been brought to the commission's attention in another way...since the commission sends information down, can the contracting province send information up, and thereby initiate an action by the commission?

**Mr. Ian McPhail:** I don't believe there's any reason why not.

**Mr. Richard Evans:** That's specifically provided for in the bill, so those are the specified activity reviews that the new commission will be able to undertake.

**Mr. Rick Norlock:** It's an information exchange that can be initiated. That differs from the current methodology, I believe.

**Mr. Ian McPhail:** We currently have information exchanges, but what we don't have at the present time is the ability to self-initiate specified activity reviews. Those can be done on the basis of information we might receive from a provincial counterpart or if there is a request from the province, through the minister, for budgetary purposes, that we conduct such a review.

**Mr. Rick Norlock:** Great. Thank you very much.

**The Chair:** Thank you both.

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

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

I'm just trying to get a handle on how the bill improves the Commission for Public Complaints or gives it more power or overcomes certain gaps that previously prevented it from doing its work.

My understanding is that you didn't have the power to compel witnesses. Is that it?

● (1610)

**Mr. Ian McPhail:** That's correct, unless there is a special inquiry.

**Mr. Francis Scarpaleggia:** If there is a special inquiry today, you can compel witnesses and request information.

**Mr. Ian McPhail:** That's correct.

**Mr. Francis Scarpaleggia:** Okay. It would be a special public inquiry.

**Mr. Ian McPhail:** That's correct.

**Mr. Francis Scarpaleggia:** Could you give me some examples of special public inquiries that have taken place in the last couple of years?

**Mr. Ian McPhail:** Very simply, in the last three years, since I've been at the CPC, there have been no public inquiries. We've conducted our work through investigations and reviews.

**Mr. Francis Scarpaleggia:** When we talk about public inquiries, we're talking about public inquiries that are led by the commission.

**Mr. Ian McPhail:** That's correct.

**Mr. Francis Scarpaleggia:** Are these generally infrequent? Could you remind us of the last one?

**Mr. Richard Evans:** The last one would have been the APEC inquiry conducted by Justice Hughes in Vancouver.

**Mr. Francis Scarpaleggia:** That was under the auspices of the Commission for Public Complaints.

Most of your work is investigations outside of public inquiries, and these you cannot self-initiate, you were saying. At the moment, you cannot self-initiate them.

**Mr. Ian McPhail:** It's a little more complex than that.

**Mr. Francis Scarpaleggia:** That's what I'm trying to understand.

**Mr. Ian McPhail:** Yes, and unfortunately, we probably need quite a bit more time.

I can commence, as chair, what's called a chair-initiated complaint, but that's after the fact.

**Mr. Francis Scarpaleggia:** It's after what fact? Is it after the fact of the incident occurring?

**Mr. Ian McPhail:** Exactly. For example, there might be a report in the media of a specific incident that clearly is problematic. As chair, I can commence an investigation into that on the basis that it's in the public interest that the commission do so.

A specified activity review is much broader. A specified activity review would allow the commission to review systemic processes....

**Mr. Francis Scarpaleggia:** It would be out of the blue. It wouldn't be in reaction to a media story or to something you heard somewhere.

**Mr. Ian McPhail:** That's correct. It could, for example, be as a result of a certain pattern we might be seeing in the reports we are doing.

**Mr. Francis Scarpaleggia:** You can do that now.

**Mr. Ian McPhail:** No, we can't do that.

**Mr. Francis Scarpaleggia:** No, this is what you wouldn't be able to do.

**Mr. Ian McPhail:** We can't do that now.

If we were to see a certain pattern that was causing us concern, we'd be able to initiate a specified activities review.

**Mr. Francis Scarpaleggia:** Based on your experience, does it happen that you notice patterns to which you would like to respond

through a review? Is this something that is fairly frequent, or does it happen very infrequently? Is this new power something that is really going to help you change the culture of the RCMP? Or is it more sporadic that you would notice a pattern?

For example, for the current problem with sexual harassment, would you have been alerted to a pattern, or would that really be something that would come through the media?

**Mr. Ian McPhail:** That really came more through the media.

In terms of how our reviews can affect the culture of the RCMP, I think the commission's work on CEW usage was very instrumental and is a good example.

**Mr. Francis Scarpaleggia:** What's CEW?

**Mr. Ian McPhail:** It's taser use.

**Mr. Francis Scarpaleggia:** Okay.

Would that have been in response to the Dziekanski incident?

• (1615)

**Mr. Ian McPhail:** It was, but the commission didn't try to revisit the same areas that Mr. Justice Braidwood did in his report. The commission looked at the state of usage of tasers and made certain recommendations, in essence that the RCMP improve its training and adopt appropriate policies.

We've monitored taser usage each year since that time, and I would certainly not suggest that it's only because of the commission's report. Obviously the strong public reaction had a great deal to do with this. However, I do believe that the commission's report and ongoing contact and feedback, both ways, with the RCMP have contributed to the change in culture.

As you may have seen from our recent report on taser usage, there has been a consistent and measurable decline.

**Mr. Francis Scarpaleggia:** Yes.

In terms of access to information, what kind of information—since we're not dealing with national security issues typically, when you're investigating—

**Mr. Ian McPhail:** We're not typically, although we could be.

**Mr. Francis Scarpaleggia:** For example, you're dealing with public complaints vis-à-vis the comportment of an officer, or you're dealing with, I guess, criminal acts by an officer. Is that correct? Those are the kinds of things you'd be dealing with?

**Mr. Ian McPhail:** I wonder if I could jump in here.

**Mr. Francis Scarpaleggia:** Absolutely.

**Mr. Ian McPhail:** This is a tricky area, certainly for the public. There are three broad areas of disciplinary actions that can be taken.

**The Chair:** I'm going to take that pause right there, because I got asking a question of our analysts here about the bill and I gave the Liberals a minute and a half more than I should have. That's a terrible thing. I can't let that happen again.

[Translation]

Mr. Rousseau, you have five minutes.



[English]

**Mr. Jean Rousseau (Compton—Stanstead, NDP):** I'll have to get those 90 seconds.

**The Chair:** You'll never get it back.

[Translation]

**Mr. Jean Rousseau:** I want to thank you for being with us, Mr. McPhail.

New section 45.37 authorizes the commissioner to establish service standards and time limits with which the Commission for Public Complaints Against the RCMP must comply. Yet no cooperative agreement with the RCMP has been concluded.

We are imposing service standards on the commission, but not giving it the ability to, in turn, impose time limits on the RCMP in their response to complaints. Do you not see that as a contradiction?

[English]

**Mr. Ian McPhail:** Yes, and this was one of the points I raised, and I expressed the hope that the committee would consider that absolutely there must be service standards. It's a good thing they're legislated for the commission.

The commission over the past while has established very aggressive service standards. In addition to establishing these service standards, we report publicly on the extent to which the commission meets those.

My earlier question was, shouldn't the RCMP have service standards as well?

[Translation]

**Mr. Jean Rousseau:** Precisely.

We know that more than 50 commissioner's notices are currently pending. That means more than 50 outstanding responses to the reports by the Commission for Public Complaints Against the RCMP. Mr. Paulson said he wanted to respond swiftly, but no deadline was set under the Royal Canadian Mounted Police Act.

Will that still be possible?

Since the idea is to rebuild the RCMP's credibility with the public, shouldn't the RCMP commissioner have to adhere to a time limit under the act in responding to the Commission for Public Complaints Against the RCMP? Would that not ensure the integrity of the public complaints process?

• (1620)

[English]

**Mr. Richard Evans:** I'll answer your question. There's just a problem with the translation here.

There were 51 commissioner's notices at the beginning of the fiscal year that remained outstanding. I believe Commissioner Paulson spoke to this committee and talked about increasing his effort in that area. We can certainly say that there has been evidence that the effort has started to pay off and the pile is coming down. We're looking now at 36 outstanding commissioner's notices, 12 of which have been outstanding for more than a year. The number is coming down.

[Translation]

**Mr. Jean Rousseau:** Thank you.

[English]

**The Chair:** Mr. Scott.

**Mr. Craig Scott:** Mr. McPhail, there was some exchange earlier to help us clarify very good questions from the other side on the relationship between provinces and the new commission. I wanted to touch on that a bit. There are clear features of the bill that basically hand off investigative authority to provincial agencies. Then you work your way back up the chain. If the provinces at various different levels don't want to do it, then eventually you'd get back with some kind of RCMP-based investigation.

I have two questions there. There are only a few provinces—maybe it's four or something—that actually have proper, independent investigation offices of the sort really needed here. Others don't, and yet the legislation would allow the province to appoint a regular police force in the province to engage in the investigation. In some areas of RCMP responsibility, especially, for example, areas that touch on or are very close to national security, aren't there reasons to be concerned about the knowledge levels, the competence levels, and the background experience of provincial bodies to investigate this, and if there is some reason, is there any way out?

**Mr. Ian McPhail:** That's a good question. Actually—

**Mr. Craig Scott:** Close is close.

**Mr. Ian McPhail:** —it takes us back to the exchange Mr. Scarpaleggia and I were having. I suggest you look at the areas of investigations. They fall into three broad categories. One would be internal discipline, which is clearly a matter for the RCMP commissioner. The second would be criminal or accusations of criminal conduct. Regardless of who is being investigated, those are quite appropriately a matter—

**The Chair:** Very quickly, please. We're just over.

**Mr. Ian McPhail:** —for the police force having jurisdiction. The third is public complaints. That's where the commission comes in.

**The Chair:** Thank you. We'll just leave it at that. We're over again.

We'll come back to Mr. Hawn, please.

**Hon. Laurie Hawn (Edmonton Centre, CPC):** Thank you, Mr. Chair, and thank you to the witnesses for being here.

Mr. McPhail, back in 1988-89, the RCMP received about 95% of the complaints and the CPC received about 5%. Over the next 22 years, that changed. In 2010-11, the CPC received 74% and the RCMP received 26%. Can you step me through that? Was that just decreasing trust in the RCMP handling of it or more confidence in CPC? Will that change going forward?

**Mr. Ian McPhail:** It's impossible to know what people's motivations are.

**Hon. Laurie Hawn:** It's such a dramatic shift.

**Mr. Ian McPhail:** It's a very dramatic shift, and there are two explanations. I can't tell you which is the more accurate. One can be decreasing confidence in the ability of the RCMP to investigate its own members. The other is that the CPC was a very new organization at that time. I think it's better known now. It's now pretty well understood by the public, and supported, that there is a body providing civilian review and oversight.

**Hon. Laurie Hawn:** Okay.

Now, did I misunderstand, or are you suggesting that the RCMP has no service standards?

• (1625)

**Mr. Ian McPhail:** I'm not saying they have no service standards, but they don't have service standards insofar as dealing with public complaints is concerned.

**Hon. Laurie Hawn:** Okay, because the RCMP has 16 very clearly defined service standards, but they may be in different areas.

**Mr. Ian McPhail:** They have service standards, but....

I'm going to let Mr. Evans deal with the details there.

**Mr. Richard Evans:** I think you've said it: there are none when it applies to the process of public complaints. There are several parts in the process that belong to the CPC and several parts that belong to the RCMP. The service standards that the CPC imposes, which Mr. McPhail spoke about, are self-imposed. This is something that was done at the commission of its own volition.

**Hon. Laurie Hawn:** With Bill C-42, which is going to hopefully streamline that process, do you see that turning into written and sort of laid-down service standards for the RCMP in this area?

**Mr. Ian McPhail:** It's not necessary that it take place in Bill C-42. It could take place by regulation, by ministerial direction, or by the RCMP adopting service standards in terms of dealing with public complaints. All we're saying is, they should be in place.

**Hon. Laurie Hawn:** Okay.

Now, you talked about your investigators having knowledge of what they're looking for, so it's hard to hide stuff that somebody might want to hide. You have 60 people? Did I understand that correctly?

**Mr. Ian McPhail:** That's correct.

**Hon. Laurie Hawn:** How many of those have policing experience—RCMP or otherwise?

**Mr. Richard Evans:** I think the complement of the commission is roughly 60 FTDs, or full-time equivalent persons. When you're talking about investigators, however, we do have an agreement; we have a standing offer that we put out, so we use external investigators for many of our investigations. Within that group, they're all former police officers.

**Hon. Laurie Hawn:** These are all private investigators...that kind of thing?

**Mr. Richard Evans:** Yes.

**Hon. Laurie Hawn:** Who hires those? Do you go to organizations? Do you go to individuals? Does the commission hire those? How do you find them?

**Mr. Richard Evans:** We follow government contracting rules.

**Hon. Laurie Hawn:** Okay. That's standard.

Can you talk about any consultation that you had in the development or implementation of Bill C-42? Were you intimately involved in that?

**Mr. Ian McPhail:** I wouldn't say that we were intimately involved. As an independent agency, it's quite correct that there be some separation. That having been said, on operational matters as to how Bill C-42 would affect the workings of the commission, we were consulted, yes.

**Hon. Laurie Hawn:** Did you offer up any advice based on experience in other areas that maybe you weren't specifically tasked to or...?

**Mr. Ian McPhail:** We've offered a considerable amount of advice over the past several years, the bulk of which, I'm pleased to say, has been adopted.

**Hon. Laurie Hawn:** That was going to be my next question. You're happy with the spirit of the consultation?

**Mr. Ian McPhail:** Yes, very much so.

**Hon. Laurie Hawn:** You listed off five areas that were important, one being more control over the complaint process. Are there enough measures there now or are there more measures you would like to see that aren't there?

**Mr. Ian McPhail:** Frankly, I think what's being done now is quite important. Let me give you an example.

We've seen complaints over incidents that took place five, seven, and ten years ago, where records, not unreasonably, haven't been fully maintained. There's no reason that commission funds should be expended in investigating these long-dead complaints. What Bill C-42 does by setting a time limit, but giving the commission the authority to vary or to waive that time limit in cases where we believe it's in the public interest to do so, I think is a very good balance.

**Hon. Laurie Hawn:** One of the things—

• (1630)

**The Chair:** I think we pretty well have to leave it at that for today.

Thank you very much to the three of you for appearing before our committee today. I think it's been very helpful.

Thank you for your four suggestions. We certainly will look at those as we examine this bill and try to figure out some of the dynamic of how these commissions make their way through and how it will be different afterward.

Thank you for what you do, first of all, and thank you for being here today.

We're going to suspend momentarily to allow our next guests to take their places. We will reconvene here in about 30 seconds.

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\_\_\_\_\_ (Pause) \_\_\_\_\_

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**The Chair:** We now have, from the Royal Canadian Mounted Police External Review Committee, the chair Catherine Ebbs, and David Paradiso, executive director and senior counsel.

We welcome you to the committee. We want to express our appreciation for your willingness to appear today to help us with our study of this bill. I know you were here for the last hour.

We'll invite you to make your comments and field some questions after, if that would be all right.

Ms. Ebbs.

**Ms. Catherine Ebbs (Chair, Royal Canadian Mounted Police External Review Committee):** Thank you, Mr. Chair.

I have been chair of the RCMP External Review Committee for seven years, since 2005.

I'm pleased to have Mr. David Paradiso, our executive director and senior counsel, here with me.

I'd like to begin by reading a short presentation.

[*Translation*]

Mr. Chair, members of the committee, I am pleased to appear before you as the chair of the Royal Canadian Mounted Police External Review Committee or ERC.

The ERC has a vested interest in Bill C-42, and I am delighted at the opportunity to explain our position on the matter.

[*English*]

The RCMP External Review Committee, or ERC, was created in 1986 to provide RCMP management and their regular and civilian staff with an independent, arm's-length labour relations tribunal. For almost 25 years the ERC has provided the RCMP with an objective and neutral case review service, delivering to it extremely specialized expertise. Equally important, the ERC also offers the general public a unique window into the labour dispute mechanisms of the RCMP.

The RCMP is the only non-unionized police force in Canada. Therefore, the ERC's independence from the internal processes is essential to assuring that grievances and disciplinary rulings are examined in a fair and completely neutral manner.

We conduct a full, impartial review. In all matters referred to it, the ERC bases its review on the record before it. This includes all of the original documents, submissions of the parties, and the decision made. In this respect, we operate somewhat like a court of appeal, as we only conduct our review on the record of evidence. However, unlike an appeal court, our reports are not rulings, only recommendations; our word is not law. We prepare recommendations and findings that are given to the parties as well as to the Commissioner of the RCMP. The law requires that the commissioner consider our recommendations but is not bound by them. The final say in all cases resides with the RCMP commissioner.

Historically, the commissioner's acceptance rate of ERC recommendations is in the range of approximately 85%. If the commissioner decides not to follow them, the commissioner is required to explain in writing why our recommendations were not followed.

Now to the subject at hand, Bill C-42.

The proposed legislation provides the force with the authority to create and implement a restructured discipline system and grievance system. Under Bill C-42, the disciplinary process would be streamlined and senior managers would be given a wider range of options to sanction members immediately. Severe cases would still be referred to an internal conduct board. It has been proposed that the board would now have discretion to resolve some cases without a formal hearing.

As for the grievance system, the force is going to develop an entirely new system, the details of which won't be known until changes have been made and Bill C-42 has been passed.

● (1635)

[*Translation*]

We are glad to be able to contribute to renewed and streamlined RCMP processes. Regardless of the changes the government deems necessary, the ERC's approach will not change. The ERC endeavours to provide RCMP staff and leadership with every protection under the law and to ensure both parties are always on equal footing in the eyes of the law.

[*English*]

To most of us, the RCMP is a national institution and one of the world's best known police forces. For the thousands of regular members, civilian members, and public servants, it is also their workplace. We know that the quality of the workplace has a direct impact on the quality of the services rendered. For 25 years, the ERC has added objectivity and clarity to the resolution of workplace disputes within the RCMP.

Now more than ever, an independent outside vision is crucial to assure both management and members that the internal processes are solid, and to assure Canadians that the RCMP takes its employer responsibilities seriously.

[*Translation*]

Thank you for this opportunity. I would now be happy to answer any questions.

Thank you.

[*English*]

**The Chair:** Thank you very much, Ms. Ebbs.

We will move to Mr. Leef, please, for the first seven minutes.

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

Thank you, Ms. Ebbs, for attending today.

I have a quick question, for clarity, on the internal conduct board. You said that the ERC can only make recommendations, and they are not necessarily binding; they are just recommendations. Can the internal conduct board make definitive decisions about employees? Can they dismiss an employee, or is that entirely up to the commissioner?

**Ms. Catherine Ebbs:** The disciplinary process starts with a review. You are talking about the new process under Bill C-42.

**Mr. Ryan Leef:** Yes.

**Ms. Catherine Ebbs:** Under that new process there will be a conduct authority, a supervisor, who will decide what process is to be used. Either the conduct authority will apply discipline or, if it's a case where dismissal may be an option, the conduct board will. That decision can be appealed to the Commissioner of the RCMP. It's at the appeal stage that the case would come to the ERC for an independent and neutral review.

**Mr. Ryan Leef:** At the point where the conduct board concludes that dismissal is the appropriate sanction, is the member, from that point on, appealing as a citizen and no longer as an employee of the RCMP?

**Ms. Catherine Ebbs:** There is a difference in the new system as opposed to the old.

**Mr. Ryan Leef:** Let's deal with the new system.

**Ms. Catherine Ebbs:** In the new system, under Bill C-42, there will be a provision that if the conduct board dismisses and the member appeals, there is no stay of that decision.

• (1640)

**Mr. Ryan Leef:** Do you see any challenges, moving forward in the appeal process, for the internal review committee? Does that create any challenges you can see for the members of the RCMP who face dismissal in terms of accessing your services, accessing appeal rights, and accessing fair and judicious review of their appeal?

**Ms. Catherine Ebbs:** It definitely is a difference in the system as opposed to the system as it exists now.

**Mr. Ryan Leef:** There has been some criticism in the past, at least, about the length of time it takes to get discipline or whatever sanction is imposed through all these systems.

How do you see Bill C-42 improving the length of time it takes? Maybe you have a case file example, not necessarily naming specifics, where you see the timeframe to process a discipline that moves right up to your level being improved by Bill C-42.

**Ms. Catherine Ebbs:** It is true that there are delays in the system at the present time. Bill C-42 creates the opportunity for the force to renew and modernize their internal processes, and one focus in that development will be streamlining processes.

I think that's a very worthwhile exercise. It will also be important to ensure that the principles that exist now will continue in the streamlining process, which include that the process be fair, open, and consistent, and hopefully, with the new process, more timely.

**Mr. Ryan Leef:** This doesn't often get talked about, so just a question about the recommendations that you're able to make. A lot of the focus obviously is on conduct of the members. It goes to an internal conduct board and then an investigation takes place. If the member doesn't agree with the decision of the conduct board, it moves up to the external review committee.

I'm sure you've seen complaints in the past that have come to your level and after a detailed consideration of the facts and an investigation, they have been shown to be unfounded and the member is cleared of any wrongdoing or misconduct. I'm sure you make recommendations about members' conduct when they're found to be responsible, but does your board make recommendations about how the RCMP deals with, or doesn't deal with, complaints that turn

out to be frivolous and vexatious or mean-spirited and without merit against the member of the RCMP?

I ask that question because restoring the confidence in the RCMP means not just the public's confidence in the discipline process, but also the individual member's confidence in this process. One of the concerns you hear internally in the RCMP is if they are subjected to an internal review or a discipline process—somebody can launch a complaint against them that is without merit and is sometimes ill-spirited.

Does your board make recommendations on that front, if it's found to be a complaint of that nature that causes grief and concern for individual members?

**Ms. Catherine Ebbs:** When a discipline appeal is forwarded to the RCMP, we do our full and impartial review and we prepare a comprehensive report with our findings and recommendations. The report addresses every single one of the grounds raised in the appeal.

The recommendation that we give to the commissioner would be whether or not we feel the allegations to have been established and whether the sanction is appropriate.

**Mr. Ryan Leef:** So it stops there, and then I presume it would be up to the RCMP to look back on how the complaint got to that point. You're clear from making comments about the grounds of the complaint.

• (1645)

**The Chair:** Thank you, Mr. Leef.

If you wanted to comment on that...

**Ms. Catherine Ebbs:** I don't really have anything to add to what I just said.

**The Chair:** All right. Thank you.

I will now move back to the opposition, to Madame Doré Lefebvre.

[*Translation*]

**Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP):** Thank you very much, Mr. Chair.

Ms. Ebbs and Mr. Paradiso, thank you for joining us today. It's really great to have you here, especially since I live in Quebec and don't know a lot about the RCMP's systems. We don't have as much access to that information in my province. It's wonderful to learn more and find out how it all works. More specifically, it is fascinating to see how the ERC operates now and how it will operate after Bill C-42 is passed, since you will be affected.

In fact, I read some of the Royal Canadian Mounted Police Act as regards the ERC and its operation.

Before Bill C-42 was drafted, were you consulted about the proposed changes to the ERC?

**Ms. Catherine Ebbs:** No, not before Bill C-42 was drafted.

**Ms. Rosane Doré Lefebvre:** You were not advised of its content until after it was drafted?

**Ms. Catherine Ebbs:** Yes.

**Ms. Rosane Doré Lefebvre:** Let's say you had to improve the ERC, to turn it into the ideal organization as you envision it. I understand that you endeavour, on the basis of facts, to be as impartial as possible and to represent everyone, a bit like a tribunal. It's great to present the facts. But you don't really have any power; all you can do is make recommendations.

When you are doing your job and the facts lead you to determine that a problem exists with a member, isn't it discouraging that all you can do is make recommendations?

**Ms. Catherine Ebbs:** Today, an independent agency has a number of intervention models at its disposal. Regardless of the model chosen, however, the external review process must remain rigorous, transparent and fair to all parties.

At the ERC, we are glad to see that the bill bolsters the importance of the external review process of systems.

**Ms. Rosane Doré Lefebvre:** To your mind, will Bill C-42 lead to a fairer and more equitable process?

**Ms. Catherine Ebbs:** The current process is already fair and equitable. I am sure that will remain the case.

**Ms. Rosane Doré Lefebvre:** If you had to turn the ERC into an ideal organization, what would you do to make it, not more productive, but more efficient, more to your liking? Would you change how the system worked? It's a hypothetical question.

**Ms. Catherine Ebbs:** It's tough to say. Discussions on how systems are developed will take place. The updating and renewal process has just begun. I am very hopeful that we will be part of those discussions. Clearly, any system can always be improved. Those discussions will give us an opportunity to contribute to the process.

**Ms. Rosane Doré Lefebvre:** I sincerely hope you will take part in the next round of discussions on system improvement. That would be greatly appreciated.

Right now, does the commissioner follow your recommendations adequately? Even though they are only recommendations, the upper echelons of the RCMP or the commissioner can still implement them appropriately. Does the process follow the proper course?

**Ms. Catherine Ebbs:** As I just explained, we know that the commissioner accepts our recommendations in the majority of cases. Under the current legislation—and this will not change after Bill C-42 is passed—if the commissioner ever decides not to accept our recommendations, he must provide his reasons in writing. That is the current procedure.

•(1650)

**Ms. Rosane Doré Lefebvre:** If he does not follow your recommendations, then, he has to have a good reason for not doing so.

**Ms. Catherine Ebbs:** Yes.

**Ms. Rosane Doré Lefebvre:** Does it happen a lot?

**Ms. Catherine Ebbs:** That he does not accept our recommendations?

**Ms. Rosane Doré Lefebvre:** Yes.

**Ms. Catherine Ebbs:** Of course, it happens. The statistics show that 85% of the time, the commissioner accepts our recommenda-

tions. The rest of the time, he provides a written explanation of why he chose not to.

**Ms. Rosane Doré Lefebvre:** Does anyone assess the appropriateness of the commissioner's decision, or does the process simply end there?

**Ms. Catherine Ebbs:** No, the process does not move beyond that point. The commissioner is not obligated to accept our recommendations, but he does have to take them into consideration. If he rejects them, he has to explain his reasons.

**Ms. Rosane Doré Lefebvre:** How exactly will the reform set out in Bill C-42 change the process? Will you have the authority to do more than just make recommendations? In other words, which changes will affect you the most?

**Ms. Catherine Ebbs:** The appeal process will not change much. The case will be sent to the ERC, which will conduct an impartial and neutral review. The ERC will then prepare a report for the parties and the RCMP commissioner, who is required to take our recommendations into account. If he decides not to follow through on them, he must explain his decision in writing.

**Ms. Rosane Doré Lefebvre:** Thank you kindly.  
[English]

**The Chair:** Thank you very much.

We'll now move back to Ms. Bergen, for seven minutes.

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

And thank you, Ms. Ebbs and Mr. Paradiso, for being here with us today.

I think for a lot of Canadians watching, it can be a bit confusing—all the different review boards and types of processes whereby the RCMP are able to file a grievance, or even further back, if there's discipline required. I think for most people the entire process is a bit confusing.

I'll tell you what I understand it to be, and you can tell me if I'm confusing things as they are currently. Then we can compare and contrast what the process will be under Bill C-42 and the role you will continue to play.

Our understanding is that if discipline is required for a specific member of the RCMP, many times it's not been able to be dealt with in a quick and efficient way. It has to go to an adjudication board, and it can take quite a long time for that to be determined. If the member is not satisfied, that's when it comes to you.

Am I correct?

**Ms. Catherine Ebbs:** Yes.

**Ms. Candice Bergen:** Okay.

The member initiates the process where it comes to you. The member would say, "I'm not happy with this outcome; therefore, I'm asking you to look at the decision and possibly appeal it." Is that correct? Does the member initiate that?

**Ms. Catherine Ebbs:** The member, or it could be the officer that initiated it if it was a decision in favour of the member.

**Ms. Candice Bergen:** I see, so it could actually be the complainants within the RCMP.

What I'm quite pleased with in Bill C-42 is that it looks like there's a real modernization of the way discipline is dealt with. A move more towards education, towards dealing with things immediately, conflict resolution—some of the basic tools that most human resource managers have in just about any organization in the country.

Do you anticipate fewer appeals, more satisfaction of outcomes, and fewer cases going to an adjudication board? Do you anticipate that things would result in a more satisfactory manner for all parties?

**Ms. Catherine Ebbs:** That would obviously be the ideal. I think that's what you're going for any time you're trying to really modernize and renew and make things better. I don't really know if we can say with certainty that that would happen, but it's obviously the goal.

• (1655)

**Ms. Candice Bergen:** Is it something that over the last years...? You've been the chair for seven years. Is that right?

**Ms. Catherine Ebbs:** Yes.

**Ms. Candice Bergen:** In the work that you've done, and dealing with members and the different clients you're dealing with, would you hear comments and feedback like, "Boy, this process is onerous" or "This is such a difficult process to go through"? Did you hear feedback from members that they wanted to see change?

**Ms. Catherine Ebbs:** I think there was concern that the process was onerous, not only about discipline but also grievances. I think everybody, including the ERC, welcomes the opportunity to be part of building a system to streamline and become more modernized, yet still keep the safeguards that are really necessary in those labour relations processes.

**Ms. Candice Bergen:** We talk a lot about legislation changing, but really we need to see the culture change in the RCMP, and the encouragement for that change. Do you think this bill and seeing the discipline process modernized will help bring about positive change within the culture and the morale of the members and all the parties involved?

**Ms. Catherine Ebbs:** It's complex to change a culture, but I think one huge factor in culture is the labour relations processes, that the members and management have labour relations processes they trust and that lead to equitable results. That has been, I think, one key reason why we have a process of external review. Anything that can be done to improve the processes, at all levels, is going to help improve the environment.

**Ms. Candice Bergen:** Just so we're clear, Bill C-42 will not affect the work you do and your ability to continue to have external review processes of decisions.

**Ms. Catherine Ebbs:** The external review process continues with Bill C-42.

**Ms. Candice Bergen:** It continues as is. Thank you.

Part of this is modernizing the discipline process, but the other part is something we are all quite interested in, which is the investigation of serious incidents. I'm sure you've familiarized yourself with the bill. If a serious incident happened, the first and best option would be that an investigative civilian body within a province or jurisdiction would investigate. The next option, if there weren't a civilian investigative body, would be another one

appointed within that jurisdiction. The third option would be that the RCMP themselves look at it with a number of safeguards to make sure that it was done in an accountable manner.

Can you also talk about the serious incidents issue, and do you ever deal with those, or would that be more of a criminal matter?

**Ms. Catherine Ebbs:** To be honest, that is outside of our area of expertise. We are very specialized in the labour relations area, and I would not be comfortable commenting on that.

**Ms. Candice Bergen:** As soon as anything crosses over to any kind of criminal or serious incident aspect, you are basically out of the equation at that point.

**Ms. Catherine Ebbs:** Our focus is on discipline and grievances with labour relations.

**Ms. Candice Bergen:** Do you know offhand how many grievances are appealed to you every year? How many do you deal with?

**Ms. Catherine Ebbs:** Generally speaking, we receive about 30 cases on average per year.

**Ms. Candice Bergen:** That's 30 per year.

**Ms. Catherine Ebbs:** It's somewhere in that area.

**Mr. David Paradiso (Executive Director and Senior Counsel, Royal Canadian Mounted Police External Review Committee):** It's a little bit more.

**Ms. Candice Bergen:** Do you know out of how many decisions that is? I'm just wondering what the overall rate of appeal is, or what the satisfaction level is with the decisions that are made.

**Ms. Catherine Ebbs:** Do you mean what percentage would be appealed in terms of all of the grievances at the first instance?

**Ms. Candice Bergen:** Yes, that's correct.

**Ms. Catherine Ebbs:** We don't really have the information about how many are begun in the first place.

**The Chair:** Thank you.

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

• (1700)

**Mr. Francis Scarpaleggia:** Thank you, Chair.

Ms. Bergen asked some of the questions I was intending to ask, and your answers provided some clarification. You are basically a labour relations tribunal. If the employee—in this case a member of the RCMP, a civilian or an officer—wants to pursue a grievance further, it will end up at your committee at the very last resort.

**Ms. Catherine Ebbs:** Yes, that's right.

**Mr. Francis Scarpaleggia:** The commissioner makes all final decisions.

**Ms. Catherine Ebbs:** That's right.

**Mr. Francis Scarpaleggia:** He or she accepts your recommendation 85% of the time. In the 15% of the time that he doesn't, out of curiosity, why would he reach a different conclusion? Does he have more facts or information, or does he just see it differently?

**Ms. Catherine Ebbs:** We work on exactly the same record, so we both base our findings and recommendations on exactly the same record.

**Mr. Francis Scarpaleggia:** It's a leadership call on his part, I guess, using his experience and his intuition, but using the same facts as you.

**Ms. Catherine Ebbs:** He's using the same facts, yes.

**Mr. Francis Scarpaleggia:** Every decision by the commissioner can be appealed to a court.

**Ms. Catherine Ebbs:** That's right.

**Mr. Francis Scarpaleggia:** What will change under Bill C-42, other than the processes that lead to a case being brought forward to your committee perhaps being simplified and made more efficient? What will change, from your point of view? Will your mandate change? Will your method of operating change? Will this bill impact your day-to-day decision-making reality in any way?

**Ms. Catherine Ebbs:** The process of appeal stays, and our external review is part of the appeal, as it is now. With the modernization and renewal and developing new systems internally, there will be changes to the first level of decision-making. It is possible that whenever changes happen at the first level, there could be some changes at the appeal level, but we don't know that yet because those details are still to be worked out.

**Mr. Francis Scarpaleggia:** What kinds of changes could you foresee? You would still get a case with facts and someone saying they were wrongly disciplined or whatever; it's just that it might take less time for it to get to your level. But you would probably be dealing with the same issues, would you not, or would some of the issues be whittled out of the case before it got to you?

I just don't see how the bill is going to change the way you do your work, or the way your committee does its work.

**Ms. Catherine Ebbs:** Essentially it doesn't change a lot about how we do our work.

**Mr. Francis Scarpaleggia:** Okay.

Do you have access to all the information you need when you are deciding a case? A previous witness mentioned that sometimes the RCMP may balk at giving over certain information. Do you run into that kind of problem?

**Ms. Catherine Ebbs:** No, that has not been our experience.

It's a very different environment. We have the record of what went on at the first instance in those cases.

**Mr. Francis Scarpaleggia:** Other than disciplinary issues, what kinds of issues would you be dealing with?

**Ms. Catherine Ebbs:** In addition to our work on disciplinary cases, we do an external review of grievance cases. Those cases can deal with a range of issues. Those cases are presented by a member who's not satisfied with the decision that's been made by the force in his regard. Those can deal with issues such as the details of relocation, travel, or isolated posts. They include harassment. They include the decisions related to stoppage without pay. They have a wide range.

**Mr. Francis Scarpaleggia:** I see. That's interesting.

I don't have any further questions, Chair. You gave me a minute more before, so I'll give it back to you.

**The Chair:** Well, thank you very much. You are making me look good here amongst my colleagues. I appreciate that.

We'll now move back to the NDP, to Mr. Sandhu.

Welcome back, Mr. Sandhu.

• (1705)

**Mr. Jasbir Sandhu (Surrey North, NDP):** Thank you. It's great to be here again.

Thank you for being here today.

I come from Surrey, British Columbia, and we have the largest detachment of the RCMP in the entire country. I can tell you firsthand that the district commander for my area, for the riding I am from...they do a wonderful job there, and the RCMP has a very good relationship with the community.

I just want to go back and be clear on this. You mentioned that you make recommendations to the commissioner and that the commissioner will make the final decision. If he doesn't accept the recommendation, he has to provide a written response. What does that written response look like? Why is he not accepting your recommendations?

**Ms. Catherine Ebbs:** For every case at the External Review Committee we have to provide our findings and recommendations in writing. We present a very comprehensive report. Likewise at the stage where the commissioner makes his decision, he provides full written reasons. If he has decided not to follow the ERC recommendations, then in those reasons he will add a part that gives an explanation as to why he thinks differently.

**Mr. Jasbir Sandhu:** Who looks at those reasons? Where does that letter go?

**Ms. Catherine Ebbs:** The reasons of the commissioner first go to the parties in that matter. They are also available internally in the RCMP. Of course, we get copies as well.

**Mr. Jasbir Sandhu:** Are there any actionable items on it, or does somebody actually look at it and decide whether those are reasonable grounds?

You mentioned that your commission is fair and neutral. You make recommendations on those principles of being fair and neutral and yet you have the commissioner making a decision and not accepting your application. Is there another party that has the final decision on this?

**Ms. Catherine Ebbs:** There is the possibility for the parties to take the case to judicial review at the court level. The next level is a court.

**Mr. Jasbir Sandhu:** It is pretty clear in the new regulations or the new law that the commissioner will have ultimate power to hire and fire, and that you will just make the recommendations. Would there be any significant downsides or upsides to making the recommendations of the ERC binding on the commissioner in cases where they involve dismissal of RCMP members?

**Ms. Catherine Ebbs:** Whether or not the external review process should be a binding process or a recommendation process, as exists now, is, as I said before, a question that has been raised and discussed. It is a valid question to determine, to debate.

But in terms of our own operations, what we are focused on is that no matter what the government decides, whether they decide that a binding regime is more favourable than the recommendation, for us it's very important that it's the principles of external review that continue to be reinforced and to be recognized and valued.

**Mr. Jasbir Sandhu:** I'm sorry to cut you off, but I have to get to the answer here.

You've been at this for seven years, and thank you for serving in that role. In your opinion—you're obviously an expert at this—would there be any upsides to this, or any downsides? Are there benefits to having a binding recommendation, or are there some downsides to it?

Perhaps you can tell us about a couple of the upsides and a couple of the downsides to having binding recommendations from you.

**Ms. Catherine Ebbs:** I think part of the discussion on what kind of external review should exist is really focused on a more fundamental question—namely, what kind of a system are you going to create? How do you get the credibility in the system, and how do you inspire confidence in the system?

I think that's part of a general debate that has to be held more globally than looking at each specific step. I go back to the fact that, in terms of our experiences, it's the principles that are important.

• (1710)

**Mr. Jasbir Sandhu:** Okay.

I'm going to shift gears here—

**The Chair:** No, actually, you're going to come to a grinding halt right now.

**Voices:** Oh, oh!

**The Chair:** We're going to move back to Mr. Hawn, please.

**Hon. Laurie Hawn:** Thank you, Mr. Chair.

Thank you to the witnesses for being here.

I want to carry on with that theme a little bit. Can you give an example—I don't want details, obviously—of the type of decision the commissioner might not have accepted from you in that 15%?

**Ms. Catherine Ebbs:** Certainly.

In a number of our reviews—because they're at the appeal level, I can talk about both discipline and grievances—the parties have raised a number of different grounds. Some of them could be related to interpretation of policies and some could be related to interpretations of different acts or labour relations principles. So it could well happen, and has happened, that we have come to a decision on an interpretation of a specific policy or a law and the commissioner has disagreed with our interpretation.

That's one example.

**Hon. Laurie Hawn:** Okay.

Now, you're not an RCMP member, obviously.

**Ms. Catherine Ebbs:** No.

**Hon. Laurie Hawn:** Do you think it's important for somebody like the commissioner of the RCMP to be given the ability and

authority to exercise leadership in these kinds of circumstances, where he ultimately carries the can for the RCMP...?

From the tone of my question, I'm suggesting that it is appropriate for him to be able to exercise leadership in those cases. Would you agree with that?

**Ms. Catherine Ebbs:** Well, that's the process we operate under, and we respect that process.

**Hon. Laurie Hawn:** Okay.

You deal with staff relations and so on. Do you have any formal dealings, or informal dealings, with the whole staff relations organization in the RCMP?

**Ms. Catherine Ebbs:** It's very important to us that we be, and that we be seen to be, an independent body and a neutral body. In that context, we want to establish proper lines of communication with both management of the RCMP and the membership. And in that context, we do try to keep regular contact, or we have meetings, with the staff relations representative as well as management.

**Hon. Laurie Hawn:** Okay.

The topic of service standards came up in the last hour, and it was suggested that there were no service standards for the RCMP in the area of complaint process. But I've looked again at their 16 service standards, and there are actually four in there that do relate to the complaint process.

Are you familiar with those service standards?

**Ms. Catherine Ebbs:** No, I'm sorry, I'm not.

**Hon. Laurie Hawn:** I think it's an important point. It was suggested that because there are no service standards—I may be reading more into the response than was there—they are somehow not doing what they should do. But just for the record, four of the 16 do specifically deal with that, so you don't need to respond to that.

You handle 30 cases. Do you have 30 cases ongoing at any one time or 30 cases in a year? Obviously it varies, but typically, how long does each one take to resolve?

**Ms. Catherine Ebbs:** It does vary because of the nature of discipline on the one hand and grievances on the other. Generally speaking, we complete 20 to 25 cases in a year.

**Hon. Laurie Hawn:** Is your caseload steadily increasing?

**Ms. Catherine Ebbs:** Yes.

**Mr. David Paradiso:** How many people do you have on staff at the ERC?

**Ms. Catherine Ebbs:** We have the unique....

**Mr. David Paradiso:** Five.

**Ms. Catherine Ebbs:** Yes, five. Our total agency is five full-time people, and that is in addition to me as CEO and the only decision-maker.

**Hon. Laurie Hawn:** That sounds fairly lean.

**Ms. Catherine Ebbs:** Yes, it is.

• (1715)

**Hon. Laurie Hawn:** At the risk of asking an obvious question, how many more people would you need?



**Ms. Catherine Ebbs:** In recent years it has happened that our caseload has exceeded our resource capacities.

**Hon. Laurie Hawn:** Those are all the questions I had.

Does Mr. Norlock have anything to add?

**The Chair:** You would have 30 seconds. If you want to come back, we'll have time to come back.

Mr. Rousseau, you have five minutes.

[*Translation*]

**Mr. Jean Rousseau:** Thank you very much for being here, Ms. Ebbs and Mr. Paradiso.

You obviously serve as an arbitration tribunal for grievances, given that you make recommendations on disciplinary measures. Under the bill, disciplinary measures could be determined at the source, by the commissioner, since he will have staffing, management and dispute resolution authority, especially as regards harassment.

How will your recommendations hold sway with the commissioner, particularly since he will always have the arbitrary power to take action? How will your agency fit in with the commissioner's new powers?

**Ms. Catherine Ebbs:** Under the current process, our external review is part of the appeal process. So some cases are settled at the first level, and we don't get the opportunity to conduct an external review in those cases.

However, our influence extends beyond our intervention in each specific case. Every time we make a determination or recommendation in a given case, a summary of that case is posted on our Web site. Our Web site provides case summaries for the past 25 years, and we know that RCMP members, managers and decision makers consult those summaries regularly, not to mention the general public.

We are extremely proud of our ability to influence the labour relations regime in that regard.

**Mr. Jean Rousseau:** Very well.

Speaking of labour relations, there are 30 cases a year for nearly 25,000 members. Is there a conspiracy to keep people quiet? That doesn't seem like very many cases to me. I get the sense that the new regime could further increase the number of complaints you receive.

I am having some trouble understanding how you intervene and what you do specifically to defend members, at that level.

**Ms. Catherine Ebbs:** First of all, I have to say that it is not the committee's job to defend members, since we are a neutral agency.

**Mr. Jean Rousseau:** Of course. Please forgive my choice of words.

**Ms. Catherine Ebbs:** That is a key part of our role.

It is a fact that the majority of labour relations disputes are settled at the first level, and that has long been the case. However, we do not have all the information on how those disputes are settled at that level.

[*English*]

**The Chair:** Thank you, Mr. Rousseau.

We'll move back to Mr. Norlock, please.

Oh, I'm sorry, you're doing a split.

Mr. Sandhu, you do get to shift into another gear here.

**Mr. Jasbir Sandhu:** Exactly. Thank you.

Do you handle sexual harassment cases?

**Ms. Catherine Ebbs:** In the work that we do on grievances, we sometimes do examinations of harassment incidents. In my experience, I have not done a lot of reviews on sexual harassment grievances.

**Mr. Jasbir Sandhu:** Are the recommendations you make case specific, or are there any recommendations that you make outside of that?

Where you may see trends emerging in different areas, do you make those kinds of recommendations to the commissioner?

**Ms. Catherine Ebbs:** Our recommendations are primarily focused on the case, but we do have situations where we have added recommendations for the commissioner.

As an example, where we are dealing with a policy that we feel is not clear, we would recommend that he order a review of that policy to see if it can be changed or made more clear. That would be an example.

• (1720)

**Mr. Jasbir Sandhu:** Have you made recommendations with regard to a sexual harassment policy?

**Ms. Catherine Ebbs:** No.

**The Chair:** Very quickly.

**Mr. Jasbir Sandhu:** Will the faster dismissal of individual members curb this problem of sexual harassment?

**Ms. Catherine Ebbs:** Faster dismissal?

**Mr. Jasbir Sandhu:** Dismissal of members.

**Ms. Catherine Ebbs:** I'm not sure whether that is a connection that would lead to results on its own.

**The Chair:** Thank you very much.

We'll go to Mr. Norlock, please, for five minutes.

**Mr. Rick Norlock:** Thank you, Mr. Chair.

Through you to the witnesses, thank you, for appearing today.

I must say I grew up in a different kind of policing system. We had a grievance system that was as a result of the bargaining unit.

When I look at your organization, I guess you would be the equivalent, and you can correct me if I'm wrong.... At the end of the grievance procedure that I'm most familiar with, when you got to an impasse, it went to an arbitrator.

Would I be correct in saying that in the absence of a collective agreement, you are an arbitrator of the grievance procedure?

**Ms. Catherine Ebbs:** I would say that's a reasonable explanation.

The outside independent review was considered essential because of the fact that the RCMP is not unionized. So yes, I think that's a reasonable explanation.

**Mr. Rick Norlock:** Of the 30 or so settlements, we'll call them, that you do, you said—if I remember your statement, I think it was to Mr. Hawn—that you're the only person who actually makes the final decision in your organization.

Would I be correct in saying that you split up your investigations to roughly five or six per person in your unit? They would look into the facts, get all the pertinent information—in other words, do the investigation—present to you the issue, as their investigation has led pursuant to your rules of engagement, we'll call them, and in the end you review that file and make the final decision.

Would that be the way it works, roughly?

**Ms. Catherine Ebbs:** It's a little different because we don't do investigations—

**Mr. Rick Norlock:** Walk me through the process, please.

**Ms. Catherine Ebbs:** We don't do investigations. Our review is based on the record that we've received. In a grievance, for example, at the first level, there would be written submissions by the parties. We would receive anything that was part of the record at the first review, and we base our review on that.

At this point in time, the act does give us the opportunity to hold a hearing, but that is very rare because records we receive from the RCMP, both on the grievance and the discipline side, are very complete.

Our staff assist. We don't collect facts. All the facts are in the record. We do an analysis of the grounds, because there are a number of different grounds that have usually been presented on either side. The staff that we have assist me in analyzing and reaching conclusions.

**Mr. Rick Norlock:** I think you've mentioned that of the 30 complaints a year, you may have one or two hearings or even fewer than that?

**Ms. Catherine Ebbs:** No, we haven't had hearings in quite a while.

**Mr. Rick Norlock:** And the reason is that the records are so complete. Would I assume that the reason you would say the records are complete is that the RCMP would ensure that the member sign off on some kind of form or paper saying, "I have reviewed the records that are being forwarded to you, the external review folks, and they accurately reflect the process according to the griever, the employee"? Is that how you determine the thoroughness of the information you receive?

**Ms. Catherine Ebbs:** In grievance cases, when the record is sent to the ERC, an exact copy of that record is sent to both parties at the same time. That's an assurance that the parties know what records we have received.

• (1725)

**Mr. Rick Norlock:** And both parties, by virtue of the fact that you don't hear otherwise, agree to the accuracy of the records? I guess I'm trying to determine how you find out if the records are accurate if

you don't do an investigation or you don't have a sign-off by both parties.

**Ms. Catherine Ebbs:** I think the sign-off is that the parties know what records we have received.

**Mr. Rick Norlock :** Have you ever had an employee, or management for that matter, challenge the accuracy of those records? In other words, you say, "I want the records", the records are sent to you, you make your determination, and a person comes back and says, "But I don't believe you received all of the information you should have in order to make this decision." You've never had that?

**The Chair:** Thank you, Mr. Norlock.

You can answer, yes.

**Ms. Catherine Ebbs:** I don't recollect any such instance, but I don't want to say no because I'm not sure if that's ever happened.

**The Chair:** All right. Back to the NDP, to Mr. Scott, please.

**Mr. Craig Scott:** On a point of order, Mr. Chair, would our colleague Mr. Hawn tell us what the four service standards are, list them and read them into the record so that we can all look at them a little later?

**The Chair:** Okay. Do you have it there?

**Mr. Ryan Leef:** Service standard number 7 specifically says, "The RCMP will willingly give advice and assist in the resolution of complaints against the RCMP or its employees and all complainants will be kept informed of the progress."

Service standard number 6 speaks to the privacy aspect of it: "Information will be released unless it compromises privacy, investigational information and techniques, suspects' rights or sources of confidential information." So it sets some parameters around releasing information.

Service standard number 11 in general says, "All investigations will be conducted in a professional manner and will be based on principles of law and ethics." It doesn't just speak to investigations of a Criminal Code nature. All investigations would be translated there.

And service standard number 13 says, "All victims and witnesses will be treated with sensitivity and understanding and offered referral to other helping agencies." This includes the complaints commission, so public complaints against the RCMP. Any time they're not satisfied with those services, the service standard directs the RCMP to provide that information for them.

And then in general, which I think would be probably where the complaints would even start to stem from in the first place, would be service standard number 16: "The RCMP recognizes that it will be held accountable for the applications of these service standards." I would assume that where they fail to do that is what probably triggers a claim in the first instance.

**Mr. Craig Scott:** Thank you.

I think one of the issues this committee, of which I'm not a regular member, might want to come back to is whether those are sufficiently specific for what is meant by "the absence of service standards" in the context. I think proposed section 45.37 talks about specific service standards around time limits, and one of the concerns is whether there are time limit service standards on the commissioner.

Thank you.

**The Chair:** We have a minute or two left. It looks like we're pretty well finished here.

Thank you very much for appearing before us today.

Forgive us if it would seem that the committee is still a little uncertain about different commissions that are always set up. We realize that many different models can work, but they can't always work at the same time. Sometimes we were talking about the former way of doing things compared to the new bill. You seemed to handle it very well.

If you recollect any of the questions in days ahead and you feel you could have answered a little differently, please feel free to e-mail or send us that testimony and we will definitely send it to our members.

Thank you.

Committee, we are adjourned.

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