



Royal Canadian Mounted Police External Review Committee

Suspensions - A Balanced View

DISCUSSION PAPER 1



Suspensions - A Balanced View

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Cat. No. JS 74-3/1-1

ISBN 0-662-56088-4

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The Committee is publishing 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.

Comments are invited; they should be addressed to:

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**Royal Canadian Mounted Police
External Review Committee**

Discussion Paper Series
Number 1: Suspension

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FOREWORD

Amendments to the Royal Canadian Mounted Police Act,* proclaimed into force December 18, 1986, established the Royal Canadian Mounted Police External Review Committee to review grievances and appeals from formal discipline or discharge and demotion proceedings within the Force.

* At this time, only Parts II and VI of the RCMP Act, S.C. 1986, c.11 have been proclaimed into force.

This paper is the first in a series of discussion papers. The Research section of the Committee Secretariat is preparing issues related to the mandate of the Committee. The Committee is seeking comment on the issues discussed in the series to assist it in better understanding a number of personnel management problems affecting police ranks. Priority in the series has been given to the issue of suspension. The paper does not seek to resolve the issue but rather to circulate and discuss the various arguments in order to lay the foundation for useful guidelines in the future. In a more modest way it is hoped that while the paper may be useful in better understanding the problems of suspension, it may also be of interest to appropriate authorities articulating policy in this important field.

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I. Introduction

Over the years, both in the public and private sector, employer-employee negotiations have resulted in a number of programs designed to improve working conditions and provide employees with a variety of security nets against undue loss of income.

Administrative provisions dealing with absences from work with pay in circumstances such as illness or long-term disability are examples of corporate efforts and governmental support for the policy of protecting employees from suffering irreparable loss of income due to circumstances usually beyond their control. Certain areas of employer-employee relations, however, have to date received minimal formal scrutiny. The issue of suspension, with or without pay, is such an area and seems in many instances to have escaped formulation of policy satisfactory to bet and employees. All too often, the absence of a clearly-defined suspension policy and its standard application have led to uncertainty, confusion and frustration; employees unable to anticipate the circumstances that can result in a suspension with or without pay (whether their own or that of a fellow worker) may perceive any such action by the employer to be unfair or discriminatory.

In the police environment, which is of primary interest to this discussion, the problem of uncertainty or predictability regarding the suspension issue has more far reaching consequences.

II. Suspension in the Police Environment

Members of a police force may face suspension for any number of reasons. Generally, they include:

- a) misconduct of an administrative nature (e.g., late arrival at work);
- b) misconduct within the police force resulting in a major contravention (e.g., insubordination);
- c) misconduct while in the execution of duties (e.g., being the subject of a complaint by a member of the public) or a charge in criminal court arising from conduct either in the course of or outside a member's duties.

The difference between each of these is obvious. While members facing administrative misconduct may face suspension as a penalty, the question of suspension prior to a finding of fact is usually an easy one to deal with. It can be quickly resolved because all concerned parties are available. The difficulty arises in cases of major offences sufficiently serious to preclude members from returning to full duty. The conduct may also give rise to criminal charges and possible conviction. It is at this juncture that the police force's managers, its members, and the public have significant interests and concerns regarding this matter.

In dealing with such a case, the police force usually takes all reasonable steps to reassure the public of the appropriateness of its response while at the same time being fair to the membership, and more directly, the members involved. The latter, on the other hand, may perceive the removal as unwarranted and undeserved punishment especially if it is without pay and benefits. This is particularly significant for police as suspension from one force precludes that member from obtaining interim employment in a similar or same field pending the resolution of the issue. This is crucial for members with limited or no other marketable skills or experience.

Members charged with a criminal offence benefit from the presumption of innocence guaranteed by the Canadian Charter of Rights and Freedoms, and may argue that if the guarantee is real and not fictitious, nothing should be done administratively which could prejudice their opportunity to have a fair trial. Even when members are not charged with offences, they may perceive a suspension pending resolution as an unfavourable predetermination of the issue. It should be understood however that the "presumption of innocence" as guaranteed by section II of the Canadian Charter does not apply to the internal police disciplinary system.

The fundamental question is reduced to the issue of whether through their conduct members have rendered themselves unable to pursue their assigned duties. The public seeks the reassurance that the quality of policing is not diluted by persons who may not be totally trustworthy, and who might be tempted to tamper with justice. If on balance it is decided that the members' conduct is sufficiently grave to warrant removing them from their regular duties, then the next issue to be considered is the length of time which may elapse before they are able to resume their duties. The delay between the allegation and its resolution is also problematic, as will be explored, since it increases the degree of disruption to all concerned and may weigh

heavily against fair treatment of one or both interested parties.

A final issue regarding the question of suspension is that of equality of treatment within different police forces. Police forces whether municipal, provincial or federal, have diverse policies on the application of a suspension with or without pay.

In this environment, it is understandable that a member could perceive as inequitable treatment the suspension of a member from one force with pay, while a colleague from another force, under similar circumstances, is suspended without pay. This would be particularly so where these same officers had been involved in a joint force operation. Experiences such as this have led some to argue that because all police officers perform similar duties under the Canadian Criminal Code and other federal statutes, the same suspension policy should be applied throughout all police forces.

While this discussion paper does not attempt to resolve this particular problem, it does concern itself with identifying and discussing issues germane to the fundamental principle that the police should benefit from fair treatment in administrative decisions relating to their specific and special duties in society.

In focussing on these issues, this paper seeks to obtain informed comments and discussion from leaders in the police community and others who have worked with different legislation across Canada. It also seeks to elicit the views of members who may have experienced first-hand the difficulties of suspension.

III. Values to be Balanced and Reconciled in a Suspension Policy

The Suspension as a Managerial Response

In all employer-employee relations, the relationship between employer and employee is based on a contract whether written or implied: the employer provides remuneration in exchange for a service while the employee provides a service in exchange for remuneration. As part of this two-way relationship, the employer may add to this: "If I hire you, you must obey all internal rules and behave at all times in a way that will not harm me. If you fail to do this, I reserve the right to deal with you as I deem fit." Of course, this way of defining a labour contract is quite simplistic, but it nevertheless captures the essence of contractual obligations between employer and employee.

Most employers, in establishing their corporate identity or image, set out expected employee conduct or behaviour in policy directives or codes of conduct/ethics. Generally, and based on the degree to which an employer perceives this code to have been violated by an employee, the managerial response is selected from a full range of sanctions beginning with an oral reprimand and in the extreme, ending with dismissal from the organization. While suspension is used by some employers as a disciplinary measure within this broad range of sanctions, for the purpose of the following analysis we are concerned with its use only as an interim measure where insufficient information or evidence is available to the employer to make an immediate determination regarding the employee's conduct. Suspension in this case might be viewed as a waiting period during which the employee is held somewhere between full employment and discharge pending a decision regarding the employee's behaviour.

The decision to suspend an employee, within this context, and more particularly whether it is with or without pay has obvious implications for both the employee and the employer. The impact of this decision will be further discussed in the following pages. Before we do so however, there are a number of premises or assumptions in the following analysis that must be explicitly recognized.

First, the entire discussion of the suspension issue is based on the assumption that the conduct in question, in some fundamental way, impedes the employee's ability to fulfill his or her responsibilities or would be so considered by others. This implies that temporarily removing the employee from the performance of regularly assigned duties (i.e., suspension) is the only applicable measure in such cases. Thus, a critical question to be asked in examining a suspension policy is how it distinguishes cases to which the policy should be applied.

Second, and related to the first assumption, is that suspension is only one of a number of possible measures for dealing with an employee suspected of misconduct. One obvious alternative would be to temporarily reassign the employee to duties that do not present or cause an organizational conflict of interests. A customs officer suspected of smuggling might be reassigned to a desk job pending a determination of the issue. A second question to be asked in assessing a suspension policy then is the extent to which it recognizes and embraces alternative strategies or measures.

Third, the parties who have control over the process and more particularly the duration of the

time interval between initiation of the suspension and the final determination are a critical variable in assessing the issue since the intensity of the value conflicts is a function of this time lapse. whether the final determination is within the organization's control or not and the extent to which either the employer or the employee concerned may affect the process are critical.

The first category involves behaviour unrelated to third party proceedings which may be resolved by the organization itself. An example of this category would be an employee suspected of having breached the organization's internal code of discipline. Because this breach does not result in civil or criminal proceedings, the outcome does not depend upon third party action. The employer decides whether the misconduct has occurred. In such a case the decision can be reached fairly expeditiously even taking due process into consideration. Any delays in the decision-making process are usually under the control of the employer. It should be noted that an employee may also generate certain delays in the determination of the misconduct. The employer, in ensuring that the employee is treated fairly, is somewhat constrained to agree to such delays.

The second category of employee behaviour is that which is to be resolved by external authorities. Such would be the case, for example, of a bank teller suspected of having falsified bank statements. Such actions are indictable and the determination of guilt or innocence may depend ultimately upon a third party, namely a court of law. In addition, however, the employee by law is given any number of opportunities for appealing third party decisions and therefore has a measure of control over the length of the process. The significance of this distinction in assessing a suspension policy should become more obvious in the following analysis. For the moment, however, it is important to note that the duration of a suspension has a significant impact on both the employer and the employee. While many employers will wait for the outcome of the criminal proceedings before making a final determination of the issue, they do so by choice. They are not bound by the decision of the criminal courts and may therefore move to dismiss an employee before the guilt or innocence of the employee has been decided. Therefore, it is important to consider who controls the outcome of the employee's case.

The Impact of the Suspension on the Employer

When the employer decides to suspend an employee, this is done at a cost. Few employees arrive on the employer's premises fully trained to fulfill all of the responsibilities expected during the length of employment with that organization. In certain sectors of employment such as the military there are few, if any, preparatory training opportunities available to individuals seeking to work in such an environment. The employer may therefore bear almost all of the financial burden of training the employee to perform the assigned responsibilities. To lose the services of that employee, even temporarily, is costly as the employer must either do without these services, make temporary reassignments of personnel which may disturb the productivity of this personnel, or train a new employee to take on the suspended employee's responsibilities. The proper recruitment and training of such an employee for specialized functions is often lengthy, sometimes taking 10 to 12 months or longer. There is also no way for the employer to recuperate the loss incurred in replacing an experienced employee.

It can also be advanced that a long-term effect on the employer is experienced where the suspicion against the person is later proved to be correct. It may be argued that if the employee was paid, during the period of suspension, an undeserved reward was received. The employee was awarded a salary even though not fulfilling his or her part of the bargain, namely working for the organization.

Furthermore some may say that being suspended and paid is really a variation of a holiday. This argument is, of course, a question of personal perception.

Although a number of factors control the degree to which the employer feels the impact, either in monetary or organizational terms, of the suspension of an employee, it is possible to conclude that such a measure is nevertheless harmful to the interests of most employers.

The Impact of the Suspension on the Employee

While the impact of a suspension on the employee varies depending on personal circumstances, and whether it is with pay or without pay, the uncertainty of such a situation weighs heavily on the employee. In dealing with an employee whose conduct is being contested, most employers prefer to be flexible, judging each case on its merits. This approach, when combined with the absence of guidelines or policy for applying a suspension, particularly in large decentralized organizations, may increase the anxiety experienced by the employee pending the final determination of the situation because the employee is unable to anticipate the actions of the employer.

A. Suspension with Pay

The suspension of an employee with pay should, of course, pose no financial hardship on the employee. There are indications, however, that there are still significant psychological and social effects on the employee as a result of being removed from the workplace.

The employee experiences stress because the suspension carries varying degrees of social stigma. The suspension also generates uncertainty regarding the employee's future with the organization. Relationships with colleagues, promotional and training opportunities are also in jeopardy.

Mental health may become a concern and depression or alcoholism and other behavioural problems may emerge as a result of the suspension. Family members as well as the employee may have to deal with the psychological effects of the suspension, particularly where the length of the suspension is unknown and/or where it extends for a lengthy period of time.

If we focus on the issue in relation to the police environment, it may also be submitted that a suspension has graver consequences than in other sectors. A police officer must be, before anything else, a model of honesty above suspicion. Once a police officer is suspected of a wrongdoing and then suspended, it matters little if in the end the member is exonerated, because

in some cases, the stigma may be attached for life. Some submit that a police officer who has once been suspended will not be promoted and is even unemployable. There are known cases, however, where this is not the experience.

B. Suspension Without Pay

Suspension without pay is generally thought to pose a more significant hardship on the employee. The financial effects may involve restrictions on the normal activities of the employee and family members. The necessities of life, such as food, health care and accommodation, particularly where there is no other regular source of income, become a major concern for the employee. Luxuries such as holidays are no longer affordable and in a worst case scenario, the employee may be forced to abandon the mortgaged home.

Some may also argue that suspension without pay is a disguised way of forcing an employee to resign, particularly if all benefits such as medical insurance are revoked with the pay. If the duration of the suspension is lengthy, an employee is forced to look for alternative employment or risk irreparable loss of income and benefits. The curtailment of certain benefits may pose significant hardships on an employee and the employee's family as administrative requirements may impede the employee's efforts to resume coverage on a timely basis.

The financial burden and resulting difficulties of suspension without pay only serve to compound the psychological and social effects previously discussed in the context of a suspension with pay.

Values Inherent to the Suspension Issue

Because of its gravity, the suspension issue merits careful and serious consideration. A suspension is a managerial strategy that arises when due process considerations are inserted into a management environment. The visual imagery implicit in the suspension concept is instructive. Suspension implies that employees are lifted out of, and suspended above their normal situation while the process of determination takes its course. By removing the employee from the workplace, the employer attempts to ensure that the integrity and safety of the organization are maintained. This resolves the managerial problem while reserving judgement about the suspected wrongdoing until sufficient information is available.

The employer has legitimate organizational goals and objectives in support of the continued existence and livelihood of the organization. The employer is entitled within the boundaries of societal rules and legislation to establish this corporate identity, taking whatever reasonable measures are available to protect this identity. When the employer perceives that an employee may present a risk or threat to the integrity or safety of the corporate identity, unless obligated by law or collective agreement to deal in a particular way with that employee, the employer is free to suspend that employee and is under no obligation to provide remuneration.

The interests of the employee, on the other hand, stem mainly from the principles of natural

justice. Procedural fairness should prevail and the employee therefore has the right to be treated fairly. This includes the right not to be subjected to administrative sanctions without the benefit of procedural fairness.

It may be argued that the employee, suspended whether with or without pay pending final determination of misconduct, is also being suspended prior to the application of fair procedures since these procedures only come into play in the course of that final determination. The employee is thus being "sanctioned" without benefit of procedural fairness, hence the employee's interests are harmed.

It is important to introduce an additional element to this discussion, that is whether the employer is in the public or private sector. This is relevant to the suspension issue as there is an official requirement in public sector organizations to reflect the principles of fairness and equity in their dealings with the public. In trying to understand the relationships between themselves and their employer in matters which may give rise to a suspension, public sector employees will naturally tend to compare the treatment they receive from their employer with the treatment they are expected to give to the public. Public sector employers therefore have to reconcile their employees, expectations with the public's expectations of total integrity and honesty.

The issue thus becomes one of balancing all of these competing interests so as to attain the best solution possible. The actual practicability of the suspension issue is mostly characterized by the infringement of one or both of the involved parties, interests. One therefore has to choose either a solution where the interests of one of the parties are prejudiced or try to find a balanced solution.

To gain a better understanding of the difficulty in reconciling the various interests inherent to the suspension issue, we look next at some of the situations regarding suspensions in the public and private sectors, including the policy of national and provincial police in this matter.

IV. An Overview of Suspensions in Various Work Sectors in Canada

While empirical data regarding suspensions in various work sectors should normally be included in the analysis which follows, this is so only in a limited fashion as the collection of empirical data on suspensions was hampered by sensitivities regarding the subject matter under review. The following therefore is an overview of suspension policies in various work sectors. While it is not an exhaustive or comprehensive analysis, it is nevertheless informative, serving to illustrate the disparity in the treatment of employees across employment sectors and more importantly, within similar employment sectors.

The Public Sector

Personnel related responsibilities in the Federal Public Service are governed in part by the Public Service Commission, which is responsible for functions such as the recruitment, selection and training of personnel, and the Treasury Board of Canada, which is responsible for functions such as pay and benefit packages. In reviewing current policy regarding suspensions in the Federal Public Service, guidance is found in the chapter on discipline contained in the Treasury Board's Personnel Management manual. In this chapter, employees and managers are advised that the suspension of an employee is always without pay and for one of two reasons, only one of which is relevant; that is to protect the employer. The Manual states:

Suspension - the temporary removal of the employee from the place of work without pay for one of two reasons:

- to protect the service, persons or property pending the investigation of certain suspected misconduct when the presence of the employee at work cannot be tolerated.¹

1 Treasury Board Canada, 330-196 (82/84, vol. 7)

The Public Service manager, in applying this policy, must attempt to balance the fair treatment of the employee with the determination of the risk or threat posed to the service, persons or property of the government by the employee's presence in the work place.

While no specific guidance is provided to the manager in weighing the factors involved in this determination, the guidance provided in dealing with disciplinary measures is useful. The manager is referred to other sources, such as existing legislation, collective agreements, and regulations which provide standards or instruction.

Managerial flexibility is stressed in the policy as is the need for consultation with other supervisors or personnel advisors.

Public perception of the impact of the employee's suspected misconduct, whether on duty or off duty, also plays a key role in the employer's consideration of the suspension issue, for lack of public confidence in the integrity of the government may have significant ramifications.

A random sampling of relevant suspension policies in provincial public services (Alberta, British

Columbia, Ontario and Quebec) were also obtained for the purpose of comparison. It is interesting to note that most provided for suspensions both with or without pay, and that some also introduced the concept of maximum duration of the period of suspension. Presumably this provision addresses the economic considerations of the suspension issue.

The two following passages are excerpts from public service labour arbitration cases pertaining to the suspension of an employee. They give an indication of the present state of the law in this area; namely, the employer must be able to justify the suspension, an employee has economic rights, and each case must be judged on its own merits:

In my view, the employer must justify the reasonableness of any act which has the effect of penalizing an employee. If an employer wishes to suspend an employee while a final decision is made, there must be good and sufficient cause. To hold otherwise ignores the employee's economic interests pending the making of the final decision.²

2 McManus v T.B.C., P.S.S.R.B. 1662-2-8048, 8078

Another case states similar principles:

On the basis of the evidence, I have little difficulty in finding that the employer was justified in suspending the grievor from his employment as an Immigration Counsellor. The offences that are alleged against him are directly related to his duties and responsibilities and, indeed, strike at the heart of the operations of the Canada Immigration Centres in the Hamilton District. The management of the Hamilton District would have been vulnerable in the eyes of both government and the public if it had retained the grievor in his function as an Immigration Counsellor in the face of the serious criminal charges laid against him. In addition, Corporal Tait and Staff Superintendent Faraway expressed their considered judgment that the efficacy of liaison and cooperation between their respective police forces and the District Immigration Services would have been impaired if, in the circumstances, the grievor had remained on the job. Mr. O'Grady, the Supervisor of the Investigative Unit, testified about the possible effects on the morale of his staff.³

3 Griffiths v T.B.C., P.S.S.R.B. 166-2-7949, Hamilton, 1980, p.23

The Private Sector

Whereas the public sector's employer/employee relations are determined in part by its mission, which is to provide services to the community and manage the municipality, province or country by planning, organizing, directing and controlling public funds, the private sector's employer-employee relations are determined in part by its profit-oriented goals. Some might even say that because a corporation must make profits to survive and because the common objective is the company's growth, there is little incentive for the employer to lose the services of an employee for an indefinite period, much less pay for a service which is not being provided. The employer must also be conscious of the impact on the organization's continued ability to generate profits of

keeping, on the job, an employee suspected of misconduct. If the employee's alleged misconduct attracts sufficient attention from paying clients such that the employer risks losing these clients if it takes no action, the pressure to remove the employee through suspension weighs heavily on the employer.

Among the corporations canvassed, no homogeneous way of dealing with the suspension issue was observed. Some employers suspend with pay while others suspend without. Suspensions are treated on their individual merits and many are dealt with in an expeditious way. The idea is to judge employees on their whole conduct. Factors such as number of years of experience, contribution, physical and mental health, possibility of transfer, conflict of interests, and gravity of the offence are considered.

The test often applied involves the following considerations:

- 1) Does the breach harm the corporate image?; and
- 2) Can the employee function normally in the work milieu?

Other Sectors

A number of employers such as the Canadian Armed Forces, and federal, provincial and municipal police forces would normally be dealt with under the public sector but, due to their specific functions in society relating to law and order, have historically been autonomous from the regulatory controls imposed on the public service. Suspensions in these organizations are generally regulated formally by either legislation or regulations. An outline of their provisions follows.

The Royal Canadian Mounted Police (RCMP)

A member of the RCMP may be suspended from duty where suspected of, or charged with, contravening a federal or provincial Act. RCMP Regulation 29 provides:

Suspension from duty

29. (1) The Commissioner may suspend from duty any officer suspected of or charged with contravening an Act of the Parliament of Canada or of a province or suspected of or charged with a service offence.

(2) The Commissioner or any commanding officer may suspend from duty any member other than an officer suspected of or charged with contravening an Act of the Parliament of Canada or of a province or a service offence.⁴

4 Royal Canadian Mounted Police Regulations, GCR 1978 Vol. XV, c1391

Once a member has been suspended from duty, the Commissioner or a Deputy Commissioner then may consider whether the member's pay and allowances are to be stopped. Section 2 of the RCMP Stoppage of Pay and Allowances Regulations made pursuant to subsection 22(2) of the RCMP Act provides:

Stoppage of Pay and Allowances

2. The Commissioner or a Deputy Commissioner may order the stoppage of pay and allowances of a member who is suspended from duty pursuant to subsection 29(1) or (2) of the Royal Canadian Mounted Police Regulations.⁵

5 RCMP Stoppage of Pay and Allowances Regulations, SOR/84-886 Canada Gazette, Part II, Vol. 118, No. 24

If the Commissioner or a Deputy Commissioner does not order the stoppage of a member's pay and allowances, the member will continue to be paid. The new RCMP Act appears to have preserved the same principles regarding suspension. Section 13.1 provides as follows:

13.1 Every member who has contravened, is found contravening or is suspected of contravening the Code of Conduct or an Act of Parliament or of the legislature of any province may be suspended from duty by the Commissioner.⁶

6 RCMP Act, S.C. 1986, c.11

It is to be noted that the definition of member includes officers. It is also apparent from the above-noted authorities that a wide discretion is given in relation to the suspension of the member and in relation to the stoppage of the member's pay and allowances.

There does not appear to be any additional formal guidance or structure to the exercise of this discretion.

In 1987, 27 Force members were under suspension for varying periods of time. While this may not seem a significant number, the impact of just one such suspension on the organization and the employee is sufficiently important to merit consideration, as we have already noted.

Provincial Police Forces

Alberta

The decision to suspend a member of a police force to which the Police Act of Alberta applies rests with the Chief of Police. The regulations made pursuant to this Act permit a suspension with or without pay or allowances. Where a member has not been charged within four clear days after being suspended, the member is returned to duty without loss of pay or allowances. The suspension of a member ceases on the determination of the charge against the member.

British Columbia

Police forces in British Columbia, to which the Police Act of British Columbia applies, may suspend a member of the Police Force. A suspended member, however, receives pay for the first 30 days of the suspension, and thereafter at the discretion of the Chief Constable and the Municipal Police Board.

This method of suspension allows time for a more substantial investigation into the wrongdoing of the member. It may also prevent putting unnecessary financial hardship on the member and the family. The 30 days "grace" period can be extended by the Chief of Police or by the Municipal Police Board.

Furthermore, this method may have the merit of forcing both parties to hasten the resolution of the case.

The Chief of Police has the discretion to suspend a member if the Chief believes on reasonable and probable grounds, that the member has committed an offence under a Federal or Provincial statute, or a disciplinary default under the Code of Discipline (made pursuant to the Police Act) that in the opinion of the Chief, renders the member unfit for duty. A member acquitted, and against whom no disciplinary proceedings are taken is reinstated with full pay and all allowances for any unpaid period of the suspension.

Manitoba

The Chief of Police of a Manitoba Municipal Police Force may suspend a member pursuant to the Manitoba Provincial Police Act. Suspension may be either with or without pay and benefits.

New Brunswick

Suspension of a New Brunswick police officer may be with or without pay at the discretion of the Chief of Police according to the New Brunswick Police Act.

Newfoundland

The Chief of Police of the Royal Newfoundland Constabulary has the discretion to suspend a member pursuant to the Constabulary Act. Suspension is either with or without pay. Should the allegation against the member be unfounded, the member is to be reinstated with full pay and allowances for any unpaid period of the suspension.

Nova Scotia

Suspension of a member from a police force to which the Police Act of Nova Scotia applies is very similar to that of British Columbia. That is, the suspension is always with pay and allowances for the first 30 days and thereafter it is at the discretion of the Chief of Police. The Chief of Police may suspend a member from duty where the Chief of Police believes, on reasonable and probable grounds, that the member has committed an offence under a Federal or Provincial Statute or a disciplinary default under the code that, in the opinion of the Chief of Police, renders the member unfit for duty.

Ontario

The suspension of a member of the provincial police or a municipal police force to which the Ontario Police Act applies, is always with pay and allowances in the case of interim suspension.

Suspension may be imposed by the Chief of Police where a member is suspected of or is charged with a contravention of an Act of either the Parliament of Canada or the Legislature of Ontario. The Chief of Police also has the discretion to suspend a member where the member is suspected or charged with an offence against the code of police discipline and where a member has been suspected of contravening an act of the Parliament of Canada or of Ontario. Where the member has not been charged within forty-eight hours after being suspended, the member is returned to duty.

Prince Edward Island

Pursuant to the Prince Edward Island Police Act, the Code of Discipline for the City of Charlottetown Police Department provides for the suspension by the Chief of Police of a member suspected of contravening an Act of Parliament or Legislature of the province or the code of discipline. Suspension is without pay.

Québec

The Regulations made pursuant to the Police Act of Québec provide that a member may be suspended with or without pay depending upon the gravity of the misconduct and other surrounding circumstances.

Saskatchewan

The decision to suspend a member of a police force to which the Saskatchewan Police Act applies rests with the Chief of Police. Where suspended, the member receives pay and allowances during the period of the suspension for at least 30 days and thereafter at the discretion of the appropriate police board.

The Canadian Armed Forces

A member of the Canadian Armed Forces (an officer or noncommissioned member) may be suspended from duty in circumstances that, in the opinion of an appropriate authority as prescribed in the Queen's Regulations and orders for the Canadian Forces (QR&O), render it undesirable in the interests of the service that the member remain on duty.⁷

7 Sections (208.04(3)) and (208.04(2)(a)(ii))

During any period that members are suspended from duty, the entitlement to pay and allowances continues but payments thereof to those members, or on their behalf, are restricted to:

- a) in the case of officers, with the approval of the Commanding Officer, advances of pay and allowances at a rate not exceeding \$10.00 a month for personal requirements, and to the mess of the officers, on their behalf, in the amount of any mess account incurred by them but not exceeding \$15.00 a month;
- b) where a member is married, or is not married but has a dependent child, an amount equal to five days pay in the case of an officer and ten days pay in the case of a noncommissioned member if that payment is made to the spouse or on behalf of the dependent child of the member, as applicable; and
- c) where in issue, Isolation Allowance, and allowances prescribed in Military Foreign Service Regulations.⁸

8 QR&O Art. 208.07

Where the pay and allowances of a member have been restricted as outlined above as the result of the member being suspended from duty, and the member ceases to be suspended from duty, the authority that suspended the member may order a deduction equal to the whole or any part of the pay and allowances withheld under the applicable QR&O article.⁹

9 QR&O Art. 208.43

The Canadian Armed Forces, approach to the issue of suspensions raises an interesting concept, that of partial payment. We will explore this approach later when looking at suspension options.

As can be seen from the above summaries of legislation, there is great variety in the tests to be applied before suspension is available. In some cases the employer must have reasonable grounds to believe the employee has been involved in some specified wrong-doing. In other cases suspension is available where the employee is suspected of, or charged with, some specified contravention. Finally, in some cases no threshold is provided and complete discretion is vested in the employer.

Suspension based on reasonable grounds to believe may better protect the rights of the employee because suspension will then be better justified. On the other hand, suspension in some cases will probably carry more of a stigma because it is directly linked to the amount of evidence available.

It is not a function of this discussion paper to analyze the implications of various tests for suspension but rather to present the considerations arising from the different suspension options. The above comments regarding the tests for suspension are made only to outline briefly some of the other issues arising from suspension. The following part of this paper will analyze in greater detail the models and options raised by the preceding legislation.

V. Models and Options

It may be said that whatever method is used to suspend an employee, the main criteria to be considered are: maintaining a balance between an employee's right to fair treatment and the employer's right to withhold the pay of individuals who are not performing their duties or who pose a threat to the co-workers and the employer. This delicate balance is explored further as we look once again at the employer's options regarding suspensions and the extent to which reconciliation of the competing interests is achieved.

Temporary reassignment

The temporary reassignment strategy provides for the suspension of the employee suspected of having committed a wrongdoing from his/her specific role responsibilities but not from work within the organization altogether; that is, suspension from their normally assigned duties.

The reassignment to other duties proves to be an attractive solution to the dilemma of balancing the rights of employers and those of employees. It provides for an integration of the values identified earlier. Furthermore, the losses are minimal as employers obtain the benefit of a productively employed individual during the waiting period. Employees are paid, but are performing alternative work. The right to be treated fairly is preserved because employees are not financially sanctioned and contrary to suspending employees with pay, temporary reassignment does not generate the appearance of rewarding employees with an unexpected "holiday". This type of approach also has the merit of keeping suspected employees out of potential conflict situations as, for example, would be the case of transferring to a desk job a customs officer suspected of assaulting someone at the border.

There are, of course, limitations to this solution. There are circumstances where the charges of wrongdoing are such that temporary reassignment is not appropriate. An employee charged with committing an act of serious sexual aggression is likely to be removed from the workplace because this employee would generally be regarded as a risk to the integrity of the employer even if relegated to administrative duties. In such cases, only removal from the organization may suffice. The practical limitations of a temporary reassignment relate to problems of feasibility in finding alternative duties for the employee to undertake. This is particularly true for small organizations, including police departments, where detachments are small.

Despite these limitations, "temporary reassignment" could adequately deal with the value conflicts to be balanced in a suspension and should always be carefully considered.

Suspension Without Pay

The suspension without pay of an employee suspected of a wrongdoing rests mostly on a contractual basis. In short, the employer takes the view that because the employee is unable to fulfil the assigned duties prescribed by his/her part of the contract, the employer is therefore no longer bound to fulfill his/her part of the contract, namely to pay the employee.

Suspension without pay has the merit of being simple and of ultimately preserving the

employer's rights. Unfortunately, suspension without pay may not resolve the dilemma of finding an appropriate balance between the rights of the employer and those of the employee.

The employee perceives suspension without pay as denial of fair treatment because there has been no determination of wrongdoing. Furthermore, the principle of procedural fairness is a highly problematic issue especially with respect to the police. The police are expected to give practical effect to the presumption of innocence when they arrest or detain an individual. They may thus argue that this same principle should be applied to them when dealing with their alleged misconduct.

Regardless of the work environment, however, suspension without pay may be perceived as unjust: it chooses to preserve the rights of one party only - those of the employer - while ignoring the interests of the employee.

It could be said that if suspension without pay is unjust for it poses hardship on a perhaps blameless employee, suspension should always be with pay and with all benefits. If simplicity was a characteristic of the issue, the suspension question would end here. It is not however the case because suspending an employee with pay can also be an unjust process. The nature of this injustice differs with the outcome of the case.

Suspension with Pay with Statutory Limit

Another strategy which is available to employers is the application of a suspension with pay for a specified period of time. This approach sets an upper limit, whether four or five days or 30 days, beyond which a decision regarding the continuation of the pay is required. Setting such a limit may encourage all concerned to proceed diligently and expeditiously to a final determination. It also limits the extent to which either of the interested parties must bear the cost of the suspension. Despite the removal of the employee from the workplace, the employee is not prejudiced and is not monetarily penalized during the statutory period. This permits the employee who may be anticipating a lengthier period of suspension without pay to make any necessary financial arrangements and arrange for the continuation of family benefits as may be required.

The employer also benefits from this approach as the salary costs of a lengthy suspension, particularly where third party determination of the misconduct is applicable, are a known and limited factor. There is less opportunity for the perception of "rewarding" the suspended employee, or the employee "on holiday", as employers and employees alike are aware that pay and benefits under this option are for a specified period only.

Suspension with Partial Pay or Benefits

Suspension with partial pay or benefits is another innovative approach to the issue of a suspension. It merits consideration because in balancing the employee's interest in fair treatment and the employer's interest to have productively employed staff, it attempts to address itself to the problem of an employer who is unable to temporarily reassign an employee to other functions. As we have previously noted, this is particularly significant for small detachments that can ill-afford the loss of an employee but have few if any other functions which could temporarily be assigned to the employee.

Suspension with partial pay or benefits may take a number of avenues, however, many would argue that the most appropriate partial pay formula includes sufficient monies and benefits for the suspended employee and family members to maintain a reasonable standard of living during the interim period of the suspension. According to a 1986 Statistics Canada Report entitled "Family Expenditures in Canada-Selected Cities, 1984", the percentage of total family expenditure for food, shelter, and clothing is 35.8% for the average Canadian family.

While this percentage, as the report notes, varies depending on factors such as individual family characteristics and usual family income, it serves as a useful indicator of the percentage of an employee's salary which would be required to maintain a "minimum" standard of living during the period of suspension. An employer, while not bound to the figure mentioned above, could nevertheless determine an appropriate percentage of salary and continued benefits which all employees suspended for an interim period would receive while suspended.

Whatever the final formula applied to determine pay and benefits allowable to an employee while suspended, it is clear that where the employer is unable to temporarily reassign an employee, this option seems to provide a better balance than is attainable in a suspension either with or without pay. Balance may be achieved in this model not by an integration of values but by sharing the burden of non-integration. Neither side is expected to bear the burden alone. While it may be very difficult to reach a balance, it is possible to be fair about the "imbalance". The costs of the employer-employee relationship that result in the problem are restricted to the parties concerned. They are not passed on to "innocent bystanders", namely, the employee's family.

Suspension With Full Pay

Suspension with pay is the suspension with full pay and benefits of an employee suspected of misconduct. The employee is not formally penalized, or at least any monetary penalty is minimized, during the suspension period. Thus the employee's interests in fair treatment are preserved.

The difficulty of this model is that in paying the employee, employers may perceive that they have, in effect, rewarded the employee's misconduct. Consequently, suspension with pay does not achieve a balance of the interests of the employee with those of the employer. The employee

is not performing his/her part of the contract, namely to perform assigned duties, but is nevertheless paid. The lapse of time between allegation and proof is critical for the employer: the longer the period of time, the more the employer has to pay, and therefore the greater the penalty to the employer.

The source of delays in due process is critical in assessing the fairness of individual cases when suspensions are with pay. Where the source of the delay is the employer, one may argue that if this increases the employer's costs then this is fair game as the employer has control over the process. The very opposite argument may, however, be made where the source of delay is some party other than the employer, such as courts and tribunals.

Where the source of delay is the employee, or the employee's agent, then any adjudicator of a grievance would have to look carefully at the motives of the employee. If the motive was mischievous in the sense that it was designed to increase the employee's reward for wrongdoing then this should weigh heavily against the employee. Where the source of delay is a third party, independent of both the employee and the employer, the penalty increase to the employer is no less real but responsibility cannot be attached to either the employer or employee. In such a situation an adjudicator may wish to point the problem out to third parties so that they are aware of the consequences of their actions. Again, however, it must be noted that employers are not obliged to await the decision of third parties before proceeding with internal administrative matters.

VI. Conclusion

While none of the models described may achieve the perfect balance, they attempt, some more successfully than others depending on the circumstances, to treat the interested parties according to the general principles of justice in a free and democratic society. It is the extent to which this balance is achieved in decisions regarding suspensions which in the final instance is of interest to employers and employees alike and can be expected to serve as a determinant in adjudication or impartial review of suspensions.

Also, the presence of a clearly defined suspension policy, (notwithstanding the model adopted), its widespread communication among employees, and its standard application by the employer are important determinants in the perception and ultimate decision regarding fair treatment.

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