

## THE STANDING SENATE COMMITTEE ON NATIONAL SECURITY AND DEFENCE

## EVIDENCE

OTTAWA, Monday, May 6, 2013

The Standing Senate Committee on National Security and Defence, to which was referred Bill C-42, An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other acts, met this day at 4 p.m. to give consideration to the bill.

**Senator Daniel Lang** (*Chair*) in the chair.

**The Chair:** Honourable senators, welcome to the Standing Senate Committee on National Security and Defence for Monday, May 6. Before we welcome our witnesses, I would like to begin by introducing the people around the table. My name is Dan Lang, senator for Yukon. On my left is the clerk of the committee, Josée Thérien. On my right are the Library of Parliament analysts assigned to the committee, Holly Porteous and Dominique Valiquette. I will now invite each senator to introduce themselves.

(French follows -- Senator Dallaire: Roméo Dallaire...)

(après anglais)

**Le sénateur Dallaire :** Roméo Dallaire, Golfe et les Îles-de-la-Madeleine.

(Sén. Mitchell : Grant Mitchell, Alberta ...)

(anglais suit)

(Following French -- Senator Dallaire -- Îles-de-la-Madeleine.)

**Senator Mitchell:** Grant Mitchell, Alberta.

**Senator Day:** Senator Joseph Day from New Brunswick.

**Senator Plett:** Good afternoon. My name is Don Plett and I am from Manitoba.

**Senator Patterson:** Good afternoon. Dennis Patterson, senator for Nunavut.

(French follows -- Senator Nolin: Bon après-midi...)

(après anglais)

**Le sénateur Nolin :** Bon après-midi. Mon nom est Pierre Claude Nolin et je représente la province de Québec, plus spécifiquement la région de Salaberry.

(Le président : Thank you. Today we will continue consideration ...)

(anglais suit)

(Following French -- Senator Nolin -- région de Salaberry.)

**The Chair:** Today we will continue consideration of Bill C-42, An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other acts. I would like to welcome Senator Manning from Newfoundland.

With us on our first panel are three officials from Treasury Board of Canada Secretariat, Dennis Duggan, Labour Relations Consultant, Strategic non-CPA Compensation Management; Kim Gowing, Director, Program Management and Regulatory Policy; and Deborah Weekes, Director, Pension Program Analysis & Reporting, Financial Analysis Group.

Accompanying these officials are Mark Potter, Director General, Policing Policy Directorate, Public Safety Canada; and Superintendent Michael O'Rielly, Director, Legislative Reform Initiative, RCMP.

Welcome. Thank you for being here to clarify some concerns the committee has in relation to this bill. We have scheduled 30 minutes for this panel. Please proceed with your opening remarks.

**Dennis Duggan, Labour Relations Consultant, Strategic non-CPA Compensation Management, Treasury Board of Canada Secretariat:** Good afternoon, senators. I do not have any opening remarks. We will just proceed to your questions if that is satisfactory.

**The Chair:** Thank you, Mr. Duggan. I was of the understanding there was an opening statement.

I would like to start with our deputy chair to lead off the questions.

**Senator Dallaire:** May I defer for the moment?

(French follows -- Senator Nolin: : Je vous remercie d'avoir...)

(après anglais)

**Le sénateur Nolin :** Je vous remercie d'avoir accepté notre invitation. Allons directement au but : Le fait que le projet de loi C-45 ait été adopté, sanctionné et promulgué avant que le projet de loi C-42 soit approuvé soulève, premièrement, des préoccupations auprès des membres civils de la GRC qui cherchent des réponses à une série de questions : de quelle unité de négociation vais-je faire partie? Qui va me représenter? Comment le Secrétariat du Conseil du Trésor du Canada prendra-t-il en compte mes intérêts comme employé? Notons que certains de ces employés ont jusqu'à 30 ans d'ancienneté.

Je crois qu'il n'était pas prévu que le projet de loi C-42 soit adopté après le projet de loi C-45. Donc, qu'est-ce que le Secrétariat du Conseil du Trésor du Canada fait pour s'assurer de la transition la plus respectueuse des droits de ces employés civils qui sont présentement à l'emploi de la GRC?

(M. Duggan : That is a question I think is best ...)

(anglais suit)

(Following French -- Senator Nolin -- à l'emploi de la GRC?)

**Mr. Duggan:** That is a question I think is best responded to by my colleagues from pensions.

**Kim Gowing, Director, Program Management and Regulatory Policy, Treasury Board of Canada Secretariat:** At this time we are currently looking at several options with respect to the civilian members transferring to the public service. With respect to their pension benefits, when options have been developed they will be forwarded to ministers to make a final decision on the pension entitlements for these individuals.

**Senator Nolin:** Is it an option to grandfather whatever rights they already have?

**Ms. Gowing:** It could be considered as an option to be considered by ministers.

**Senator Nolin:** What about the fairness?

**Ms. Gowing:** We are looking at all aspects and taking into consideration the concerns of all members, as well the government.

**Senator Nolin:** When Mr. Toews appeared before the committee, he referred to concerns that were under review by the Treasury Board of Canada Secretariat. You had received, from one or many of those civilian employees of the RCMP, probably through writing, expression of these concerns. Can you share with the committee to what extent the actual civilian members of the RCMP shared those concerns?

**Ms. Gowing:** I cannot speak to the individual requests, but I can say we are aware of the concerns of members and this has been brought to our attention through senior officials. We are working collaboratively with the RCMP to develop options that will be fair to both members and to the government, and they will be presented to ministers for a final decision.

**Senator Nolin:** Is one of those options to bring an amendment to the Public Service Superannuation Act?

**Ms. Gowing:** In all likelihood we will have to open the legislation for both the Public Service Superannuation Act and for the Royal Canadian Mounted Police Superannuation Act to affect changes.

**Senator Nolin:** Can you explain why?

**Ms. Gowing:** It will depend on the final options that are chosen as to what we do to the legislation, so I cannot speak to the changes.

**Senator Mitchell:** Could you give us some idea as to what the concern is of the people who will become public servants? What is the concern with the pension and why is there a question about treating them differently than they had been or reducing their benefits? How would that not be fair to the government? You are saying there is a balance here, but how could that be?

**Ms. Gowing:** The way the legislation is written, right now under the Public Service Superannuation Act, if a civilian member decides to voluntarily leave the employment of the RCMP and go to the public service, they will be subject to the retirement age of 65. That is the way the legislation is currently written for Bill C-45 when it came into effect.

What we are trying to look at, at this point, is that you have a large group of employees who are coming over to possibly become public servants under the PSSA who are not doing so voluntarily. Therefore, the only appropriate thing would be to look at the benefits of these individuals.

**Senator Mitchell:** Now they can with retire at 55 without penalty; is that right?

**Ms. Gowing:** I cannot speak to the exact provisions of the plan. The RCMP is responsible for the administration of the RCMP Superannuation Act.

**Senator Mitchell:** Perhaps Superintendent O'Rielly can clarify that. It seems to me the issue is that, now, if they are there, they can retire at 55 without having their pension diminished at some penalty percentage per year --

**The Chair:** Order, please, senator. Superintendent O'Rielly will respond.

**Superintendent Michael O'Rielly, Director, Legislative Reform Initiative, Royal Canadian Mounted Police:** Thank you, senator. Thank you, Mr. Chair.

Yes, as Senator Patterson was indicating, there is a series of different ways to retire. You can leave at 55 if you have 30 years of service, or you can retire at 60 years.

**Senator Mitchell:** If you left at 55 now with 30 years of service, you would not be penalized; you would get the full pension for those 30 years. However, if you moved to the public service all of a sudden and you have 30 years at 55, if you retire at 55, you will be penalized a certain percentage per year before 65; is that true?

**Mr. O'Rielly:** That is the way that Bill C-45 is written, as I understand it.

**Senator Mitchell:** It is quite an abrupt change for these people.

I have another question, if I may. I know that Treasury Board has quite serious and specific definitions of "sexual harassment." Is that something that falls within your purview? There was

some issue in this debate about whether the RCMP's view of sexual harassment really conforms to the Treasury Board's view. Is there some configuration there?

**Mr. Duggan:** As far as I am aware there is no separation in terms of how one views what sexual harassment is. As to the process, that is the purview of the RCMP, or it will be under Bill C-42 once it is passed. If there are specific questions on the process and how that is being developed, Superintendent O'Rielly is well placed to provide those answers.

**Mr. O'Rielly:** Could you repeat the question, please?

**Senator Mitchell:** I am interested in whether there is a distinction between the way the Treasury Board guidelines define "sexual harassment" and the way the RCMP defines it, and whether there are specific differences in wording or intent and ultimately in consequence on how that infraction is viewed.

**Mr. O'Rielly:** In point of fact, the Treasury Board policy -- neither the one previous to October 1, 2012 nor the current one -- defines "sexual harassment;" it defines instead "harassment." Within the RCMP, in order to determine the different types of harassment, we have we internally defined sexual harassment for the purpose of tracking how many of those types of complaints we get a year.

**Senator Plett:** Thank you, Chair.

Do all RCMP civilian member job categories currently have a direct counterpart in the public service?

**Mr. Duggan:** No, that is not the case. The majority of the occupational groups that are applicable to CMs currently in the RCMP have a benchmark match with groups that already exist under the Treasury Board system under the PSLRA. There are some that do not exist, and that is part of the ongoing process in looking at how we manage those groups for which there is not a direct match. That is an ongoing process now.

**Senator Plett:** How that will happen has not been entirely established yet, has it?

**Mr. Duggan:** Not as yet, but work is ongoing. Our classification experts are working with RCMP experts who are members of Superintendent O'Rielly's team to examine those and ensure that, when deeming does occur, we have a proper place for all the CMs who will be moving.

**Senator Plett:** Is there anyone representing the interests of the RCMP civilian members in this process?

**Mr. Duggan:** I know they have been in close contact with the RCMP themselves, as this goes on, in terms of how the process is going up to that point. They have certainly made their opinions known, as far as I am aware, as to how they see this.

Going forward, once deeming does happen -- and that is not for a while, because that does not occur right away in any event and will not until we have determined where all these groups go -- then you have bargaining agents who represent the different occupations.

**Senator Plett:** Once they are part of the public service.

**Mr. Duggan:** Yes.

**The Chair:** Colleagues, please keep your preambles to a minimum. Time is relatively short.

**Senator Day:** I would like to go back to Treasury Board. Clause 86 of the bill provides this provision about which we are receiving many letters. They are coming from those individuals who are working for the RCMP but who are not public servants at the present time, but who are not members. I am using the term "member" in the sense that I think someone in uniform as a "member" of the RCMP.

Do you also consider the civilian employees of the RCMP as "members"?

**Mr. Duggan:** They are, indeed.

**Senator Day:** They are. That, then, is how that brings them under the deeming provisions for clause 86.

**Mr. Duggan:** Correct.

**Senator Day:** So they are members and they have certain rights and responsibilities as members that public servants do not have.

**Mr. Duggan:** They are in a different occupational group and appointed pursuant to the RCMP Act, so in that sense, yes. That particular provision applies only to civilian members, not regular members.

**Senator Day:** It says "as defined in subsection 2(1)" of the act as it will then be.

**Mr. Duggan:** Right. In the act itself, the reference is only to members. The differentiation between regular members and civilian members is actually in the regulations. The 4,000 or so civilian members who would be subject of that particular provision are the ones who are covered. That is who we are talking about.

**Senator Day:** I am trying to clarify this so I can understand how to vote on this bill if and when it comes before us on clause by clause. I think it is important to understand what is here. Now I find there are regulations that would have helped me that I did not have a chance to review.

Clause 86 provides that the "Treasury Board may publish." Is that all the authority? If this is passed, would Parliament speak and says, "We want you to do this," and then Treasury Board goes ahead and acts on this, or will this take a decision of the President of the Treasury Board and the

other ministers before Treasury Board will act on this with respect to those civilian members of the RCMP?

**Mr. Duggan:** The entire exercise we are engaged in now in terms of looking at the appropriate classification into which we will include civilian members -- all the work that is being done -- will lead to a submission to the Treasury Board. Treasury Board will make the decision as to when the deeming provision --

In effect, we will deem these individuals to be appointed pursuant to the Public Service Employment Act; in other words making them public servants in that sense and not members under the RCMP Act. That is a Treasury Board decision.

**Senator Day:** Treasury Board is made up of a number of ministers of the Crown.

**Mr. Duggan:** Correct.

**Senator Day:** Is the Treasury Board of Canada Secretariat the group that does this deeming, or is it broader than the secretariat?

**Mr. Duggan:** The secretariat has no authority in this regard; this is entirely a ministerial decision. We support the Treasury Board president and Treasury Board ministers in doing the work to permit them to make the appropriate decision.

**Senator Manning:** To follow up on Senator Nolin's questions earlier in relation to the transfer of pensions, Ms. Gowing touched on the fact that options were being prepared for ministers. Senator Mitchell touched on a situation of the 55-year-old with 30 years' service. Will there be options for the members themselves? Will they be told what will happen now for a 30-year-old necessarily at 55 or will there be options where they can move here or there or wherever the case will be?

**Ms. Gowing:** That will be a decision for ministers. I cannot speak to that.

**Senator Manning:** Do you anticipate a situation where an RCMP regular member and a former civilian member may end up performing the same job but at different pay scales?

**Mr. Duggan:** I am not aware of that. Perhaps Superintendent O'Rielly can tell us.

**Mr. O'Rielly:** Thank you, senator, and Mr. Chair. In terms of a regular member being focused on policing duties, no, that is not anticipated. The challenge we have now is as we stand up all these different structures that would be provided for under Bill C-42, to a certain extent we will have to figure out the most suitable category of employee for some of these positions. In some cases it may be a regular member or police officer. In some cases it may be a civilian employee.

As a result, for a short time we will be going through these growing pains, but to say that I could see a future where we would have a regular member performing a civilian employee's position or role, no, I cannot say that we are forecasting that into the long term. However, as I said, in the

short term, as we stand up these processes, there may be some situations where we move from category of employee to another as we determine the best fit and the actual requirements of the various positions and the rules and responsibilities that need to be fulfilled.

**Senator Manning:** Thank you.

**Senator Campbell:** I apologize for being late. If this has already been covered, please tell me. My biggest concern in this bill is the 4,000 civilian members. I have issues with other parts of the bill, but the one that seems the most unfair to me is that we will tell 4,000 employees that tomorrow all of the plans they have made while being a civilian member will go out the window and there is no option, no choice, no way of changing that.

What would happen if either we put in a grandfather clause that said it starts on whatever date the bill takes place, and then the positions, as they become redundant, are filled by public servants? What is the thought on that? We are turning 4,000 lives upside down for I do not really know what. I think at the end of day it will be cheaper.

However, as someone who has depended on civilian members for my safety in all aspects -- not just as my radio operator but also supplying me with intelligence on my projects -- they are the lifeline for the regular member. I would like to know what we will do for them, the ones who are still here.

**Mr. Duggan:** In point of fact, the day after they are deemed to be appointed under the Public Service Employment Act, the jobs are not changing; they are still doing what they did the day before.

**Senator Campbell:** Let us just stop right there, if I may. They lose their benefits for pension; their pension changes from 55 years of age with 35 years' service to whatever it is. Their health benefits change; their compensation package changes; their annual leave changes. Their life changes that day.

**Mr. Duggan:** I cannot speak to the pension. I will allow my colleagues to refer to the pension.

However, on all the other aspects, quite a number of the individuals included in that group are pay matched to groups that already exist in the public service. As a consequence, in terms of pay, it is not likely to change. There are some differences, and we are well aware of all those issues and are looking at it in terms of how we go about managing the transition. The difficulty at this point, of course, is that we do not know exactly where everybody is going, and you have to keep in mind of course that we have a myriad of collective agreements with differing terms and conditions of employment. Until we know exactly where individuals are slotted, we do not know what real differences exist.

Those are some of the issues that we are in the process of looking at, and at this point, of course, it would be just speculation on our part to say what we could or would do.



**Senator Campbell:** Really we are saying "just trust us." You do not know where they are going, you do know the numbers, we are not sure if the job classifications match up and "I am from government and just trust me." Does this give you any level of comfort?

**Mr. Duggan:** We are working with the RCMP on this. They know their people very well, and I do not think there is any question about the value of the work they do, and I do not think anyone has suggested that the situation in that regard changes.

The issue will be, as my colleague referred earlier, looking at what is an equitable solution in terms of moving people. A huge number of things are the same to the extent that we do not have groups that match up, and those are obviously things we will have to take into account in terms of going forward, and that is an issue decided by the Treasury Board.

**Senator Campbell:** Would it not just be much simpler to grandfather this and then as the positions open up you will have time to take a look at it and figure what it will be and where it will go? It will give the RCMP a chance to decide if that CM should be a regular member. It seems like we have this rush to judgment going here, and at the end of day, we have no idea what will happen.

**Mr. Duggan:** In terms of time, of course, this has been going on for some time in terms of the whole issue around categories of employment at the RCMP. The issue also has to take into account the fact that we have, I believe, 16 bargaining agents involved who represent a myriad of collective agreements.

**Senator Campbell:** Is that within the RCMP?

**Mr. Duggan:** No, in the public service.

**Senator Campbell:** I do not care about the public service. I am talking about within the RCMP.

**Mr. Duggan:** We have to look at it broadly speaking in terms of how we make this work in the end, and we are working with the RCMP on this to ensure we do the right thing by both the members themselves and our employees and the government itself.

**Senator Patterson:** I just want to ensure I understand the fairness matter as far as pensions are concerned. Do I understand that a civilian who joined the RCMP as a civilian member on the expectation that he or she would be able to retire at 55 after 30 years, or at 60 after two years, which I think is the present rule, with Bill C-42 now will possibly become a public servant with a new retirement age of 65 and that those people are saying, "This is not fair because I joined on certain expectations"? Do I describe the fairness issue vis-à-vis pensions correctly?

**Ms. Gowing:** That is the current issue, yes.

**Senator Patterson:** I was pleased to hear that options are being considered to deal with that issue and that grandfathering is one of the options.

I note under clause 86(1) about the deemed appointments that Treasury Board may publish a date on which certain members become civilians. Does one of the options relate to that discretion, that the date might be changed or modified until the grandfathering options are put in place?

**Mr. Duggan:** It is perfectly characterized as a permissive provision. While section 86 is in effect as of Royal Assent, the decision on which to deem members to be appointed will obviously be some time after that.

I believe Minister Toews referred to this in his testimony, there is a lot of work that has yet to be done in order to make this happen. None of it will happen until we have all the work done, including some decisions around how pensions are to be treated, and that will be down the road.

**The Chair:** Ms. Gowing, you mentioned further legislative requirements as we move in the process. Can you clarify for the record, in respect to the transfer that is taking place, and because of the classification of these civilian workers going to Treasury Board, am I to understand that further legislation will be presented through the public service superannuation in order to bring this into effect? Is that when the decision will be taken?

**Ms. Gowing:** Depending on the decision of ministers on the pension options there may be a requirement to change the Public Service Superannuation Act to bring these individuals into the plan.

**The Chair:** In order to grandfather these employees, does that require another piece of legislation or can Treasury Board just arbitrarily do it?

**Ms. Gowing:** It would have to be the opening of the legislation to do that. Treasury Board could not make it a unilateral decision: they would have to open the Public Service Superannuation Act.

**Senator Nolin:** Mr. O'Rielly, who represents those civilian members now?

**Mr. O'Rielly:** All members are represented by the Staff Relations Representative Program.

**Senator Nolin:** You heard Mr. Duggan explain that in a situation where a member of the groups represented by unions that are dealing with Treasury Board, if a similar process were to take place, those negotiators representing employees would already be working with the Treasury Board. What is happening with those civilian members now? Who is representing them before the Treasury Board?

**Mr. O'Rielly:** I am not sure that I am the right person to respond to that because, as I understand, negotiations would fall strictly within the parameters of the Treasury Board of Canada Secretariat.

**Senator Nolin:** You understand -- my word is probably not right -- how unfair that could be. Normally a member of the civil service would be represented by a union representative before the Treasury Board all along the way to ensure his or her rights are protected. Who will be looking after those people? Do you understand the concern we have on both sides?

**Mr. O'Rielly:** Yes, I do understand your question a bit more now, thank you. The challenge we have right now is that until we know where civilian members impacted by the deeming clause could end up, in terms of occupational groups definitively, no one is in any position to represent or negotiate on their behalf for the final terms and conditions. Right now their interests are being brought forward and are represented and assisted by the Staff Relations Representative Program.

There is no right to negotiation at this point in time because there are no terms and conditions actually on the table for negotiation. Until we know the occupational groups, until we know who would hold the certificate, for example, the right to representation under the PSLRA, the Public Service Labour Relations Act, to represent or negotiate on behalf of that specific bargaining unit, there is no negotiation ongoing.

Instead we are engaged in a process of exploration to determine the very many concerns that have been brought forward, the very many emails I have received, the very many contacts I have had from civilian members across Canada asking, "Are you aware of this"? "Are you aware of the potential impact here or there?" Those are also being brought forward by the Staff Relations Representative Program, but they are not negotiations.

Right now we are engaged in identifying the issues and being in a position to move this forward, wherever it may end up.

**Senator Nolin:** Later on this afternoon we will hear from the Staff Relations Representative Program. Do they have a role to play?

**Mr. O'Rielly:** Yes, absolutely. At this point in time they represent the interests of all members.

**Senator Dallaire:** Ladies and gentlemen, I am going down the row: you have done your homework, and they have been identified with the different employment groups there. All public servants below EX are represented by a union; am I correct? Do all employees below EX have a union representative in the public service?

**Mr. Duggan:** No, there are groups that are unrepresented, but it is their choice.

**Senator Dallaire:** That means that once they have been identified to a group, it does not necessarily mean there is a union there that will accept them and will fight for their cause; is that correct?

**Mr. Duggan:** That is correct. Most are or would be, given the fact that their pay matches against a lot of our groups already. There are a few that are not, and they would be unrepresented. However, they also have the choice to seek representation if they so choose.

**Senator Dallaire:** There will be a bargaining process once they have been identified by Treasury Board with representation at that time?

**Mr. Duggan:** At that point, yes. For those who are not, and the possibility exists, should they seek to be represented certainly there is a process under the Public Service Labour Relations Act to do that, so it takes its natural course.

**Senator Mitchell:** The government certainly is not doing this for no reason. They are not doing it for nothing. Even though we are being told all of this is up in the air, we do not know what the result is, surely the government is doing this because they think they will save money. Correct me if I am wrong, but if they are saving money it will not be fair to the employees; is that right?

**Mr. Duggan:** I think the rationale was explained well in the opening remarks of Minister Toews in terms of why the government was proceeding. It is about enhancing accountability of the RCMP, but also to move forward and for a more effective and efficient force. That includes employees who are in the public service part of that environment.

**Senator Mitchell:** How does reducing someone's pension benefits enhance the RCMP's accountability?

**Mr. Duggan:** I am not suggesting that is the case. I am saying why we have legislation, and there are other issues that come up. As we have indicated, we are in the process of --

**Senator Mitchell:** It is a zero sum game, and in a zero sum game fairness does not go both ways. I cannot imagine the government is doing this for no reason.

**Senator Day:** Section 86 has been the section we have been talking about throughout this session today. Section 86(1) talks about the Treasury Board may publish in the *Canada Gazette* and the deeming provision shall take place, but it says subject to 20.1. I am trying to point out how convoluted this is and how difficult it must be for someone who is a civilian member to try and figure out what the impact of all of this is.

If I go back to section 20.1 it says, in addition to the powers under section 1 of the Financial Administration Act, then Treasury Board may determine categories of members in the exercise of its rights, so under section 7(1)(e) of that act. Now I have to go to the Financial Administration Act and have you ever exercised, up until now, powers under section 20.1 that would make it unnecessary for clause 86 to raise the concerns of civilian members of the RCMP?

**Mr. Duggan:** That is a new provision in the RCMP Act, but broadly speaking the authority of the Treasury Board exists under sections 7 and 11 because we have not gone through this process previously. However, the Treasury Board has certain authorities under the current RCMP Act in terms of numbers and categories.

**Senator Day:** Clause 86 is the one causing us concern and it says subject to 20.1, so you have power under section 20.1 as well.

**Mr. Duggan:** Yes, section 20.1 determines categories of members so you have to decide what a member is, in the sense that members would be police officers. Everyone who is not a police officer

would then be in that group -- civilian members -- who would be deemed to be appointed under the Public Service Employment Act.

**Senator Day:** You told me the term "member" under regulations includes civilian members and uniformed members.

**Mr. Duggan:** That is currently. Obviously those kinds of regulations would change in the future.

**Senator Day:** I am not sure if this has made it any clearer for me.

**The Chair:** Senator, I am trying to keep us in part on schedule if I can, recognizing the questions. In fairness, I think Senator Plett had a question as well. You are okay? One more question.

**Senator Day:** It is difficult to follow the different procedures under section 20.1, which is that clause 86 is subject to 20.1. I have to know what might happen under section 20.1 to understand the potential impact on the civilian members of the RCMP.

**Mr. Duggan:** The process starts with the Treasury Board deciding what the category of member is, and that is member under the definition, the RCMP Act. Once you have decided that, those who do not meet that definition would then be in the category deemed to be appointed pursuant to clause 86.

The first step is to make a decision on what is member is, and those who do not meet that definition would be captured by clause 86 and deemed to be appointed under the PSEA.

**Senator Day:** The civilian members are members, as you pointed out.

**Mr. Duggan:** Currently, yes.

**Senator Day:** They would not come under clause 86 then?

**Mr. Duggan:** Precisely. They come under clause 86, but they would not be considered to be members anymore.

**The Chair:** Time is marching on here. I would like to thank our witnesses again for their presentations.

As we continue to study Bill C-42, we have two representatives from the Mounted Police Professional Association of Canada: Mr. Rae Banwarie, President; and Mr. Lloyd Pinsent, B.C. Representative on the National Executive.

Also joining this panel is a representative from the Association des membres de la police montée du Québec Inc.: Mr. Gaëtan Delisle, President.

Welcome, gentlemen. I understand that both associations have opening statements. I would like to begin with Mr. Banwarie.

**Rae Banwarie, President, Mounted Police Professional Association of Canada:** I would like to thank the committee for the privilege to speaking today in regards to Bill C-42.

I am the national president of the Mounted Police Professional Association of Canada, and present with me is Mr. Lloyd Pinsent, one of my directors from British Columbia.

We are currently serving members of the RCMP. MPPAC is the umbrella association for hundreds of RCMP members across Canada, in every province. Mr. Pinsent and I are placing our careers in peril by appearing here, because we will be providing the committee with a frank, honest view from the front lines as to the membership concerns that are specific to Bill C-42.

We currently have a court challenge before the Supreme Court, seeking the right to associate this November, with a decision next year. We are concerned that if Bill C-42 is passed, there is no ability or provisions to deal with a collective agreement in this bill. This will cause a detrimental impact on the members of the force and on the Canadian taxpayer, who will have to pay to have this bill sent back to Parliament to be revamped.

Mr. Pinsent will speak now on specific issues, after which I will close with my own statements.

**Lloyd Pinsent, B.C. Representative, National Executive, Mounted Police Professional Association of Canada:** Thank you, Chair and members of the committee. I will focus on three main areas. They will suffice to prove my ultimate point, which is that by solidifying the power imbalance in the RCMP and by not having independent oversight, a collective bargaining process or an independent arbitration process to resolve deadlocks, Bill C-42 will ultimately lead to the destruction of the force.

Area 1 covers individual freedoms. Compelling a subject member to provide a statement or documents that can be self-incriminating, or getting ex parte search warrants on personal residences for an administrative process, where guilty is decided on the balance of probabilities, is simply not Charter compliant. It is irrelevant whether these provisions exist in other police acts. They have tried to put stipulations around the use of this clause, but the facts is one can put lipstick on a pig but it is still a pig.

If the senators think that these provisions are Charter compliant, would they be willing to have the same kinds of provisions on themselves?

The second area is mismanagement and corruption. The commissioner will be empowered to discharge or demote a member for any cause he sees fit. If this clause were to pass, what little protections that did exist for the members will be gone; they could be demoted or discharged if the commissioner or his delegates determines that them speaking out is causing too many problems for management and is thereby interfering with their bonus structure.

Bill C-42 solidifies the imbalance of power. I say “imbalance” because, unlike every other police force in Canada, we do not have a union to represent the members. The DSLR system touts the idea of meaningful consultation as though it were some way to protect the members from abuse; it is

not. The SRRs were extensively consulted on Bill C-38, from which the majority of Bill C-42 is derived. The DSLRs are management controlled and powerless to negotiate anything in the force. These member representatives have admitted that they agreed to provisions that will end up costing the members and Canadian taxpayers.

It took decades for the issues of sexual harassment in the RCMP to come to public light. It was not because these members did not go to their managers or to the SRRs. Some did. Their concerns got swept under the carpet or, worse, they were vilified for trying to shed light on the problem. Was this because rocking the boat would impact the SRRs' and managers' ability to get their next promotion or commission? All one has to do is read the recent directive from Commissioner Paulson that has muzzled those above the superintendent rank from speaking directly to their elected representatives without further getting clearance.

The final area is on national security and Canadian ethics. The Minister of Public Safety can direct the RCMP to conduct an investigation based on a threat to national security or that of an ally while not providing any proof of such evidence existing. This politicizes the national police force.

Minister Toews has directed the RCMP, among others, that we must use information, even if it is generated from a torture victim. This contravenes the Criminal Code and the Geneva Convention. General Dallaire has seen the effects of torture. As police, we rely on human source information, especially for threats to our national security. What parent, relative or friend will provide information to us if they know that person could be the subject of torture? If we have changed our operating process to now view torture as useful, then why are we not doing the torturing ourselves, and if we do, why stop at the alleged terrorist; why not torture a kidnapper or a serial killer in order to stop the person from terrorizing the communities? We do not because it is wrong, unethical and illegal.

If the threats to our security are greater than what existed during the 1940s, then the issue must be debated in Parliament so that Canadians can voice their opinions. The fact is that the use of torture will only make us less safe, not safer -- a point highlighted by the former head of MI5, Dame Eliza Manningham-Buller.

While we all want and recognize that the RCMP needs to be modernized, Bill C-42 will move labour relations in the RCMP to the time of the march west.

Power corrupts, and absolute power corrupts absolutely. In speaking with some of the senior manager, I have been informed that I understand the ramifications of the bill better than they do, yet they will have all the power in its implementation.

Thank you for the time for us to present our members' concerns.

**Mr. Banwarie:** I will conclude with a few key remaining points from our draft. Under proposed subsection 20.2 of the bill, members will be forced to undergo medical exams specified by the commissioner. Members will have no choice, and every doctor will be placed in a position of conflict. Under Bill C-42, the opinion of the force's doctor is final and there is no redress.

Currently, the RCMP has no policy to deal with violence in the workplace, specifically psychological violence. This is a requirement under Part II of the Canada Labour Code, which applies to the RCMP. The lack of this policy may be a contributing factor to sexual harassment, bullying and the victimization of members currently diagnosed with PTSD. Bill C-42 has no such provisions as required by law. This must be changed; it cannot remain this way.

In closing, I will state that we all have an obligation to ensure we implement processes that will make the RCMP more transparent, accountable and impartial to all of our employees and, ultimately, every Canadian. Bill C-42 does not provide these, as every component of this bill is compromised, orchestrated and controlled by the commissioner or his delegates, with no independent oversight.

Bill C-42 goes against the very essence of our democracy: our Canadian Charter of Rights and Freedoms. This bill cannot pass; it must be modified, and include independent oversight. If left in its current state, it will result in irreparable harm to every member of the RCMP, every Canadian and our country on a global scale.

Thank you.

**The Chair:** Thank you. I will invite Mr. Delisle to begin.

(1700 follows in French -- Mr. Delisle: Merci beaucoup...)

(après anglais)

**Gaëtan Delisle, président, Association des membres de la police montée du Québec Inc. :** Je remercie les honorables sénateurs de nous avoir invités. Je pourrais prendre du temps pour expliquer davantage la lettre que nous vous avons fait parvenir concernant le projet de loi C-42. Toutefois, je vais aller droit au but en commençant avec un peu d'histoire récente.

J'ai entendu les propos des représentants du Conseil du Trésor.

(Mr. Delisle cont': They were saying that there should be...)

(anglais suit)

(Following French -- Mr. Delisle continuing -- represent tres aur.)

They were saying there should be negotiation with the D reps or the other people involved if there are changes relative to the civilian members.

I will direct your attention to a judgment that was rendered very recently on Robert Meredith and Brian Roach and the Attorney General of Canada. In this case, simply put, we had a rollback situation regarding our pay because the law that was passed was retroactive to our pay. I am glad that our divisional staff relation representative will speak after us so you can ask questions about their involvement in that situation.



However, when you look at the decision that was rendered, it says Treasury Board, the ultimate decision maker, was not obliged to consult with either the pay council or the staff relations representative. I heard, because we represent some of those civilian members, that they are not even obliged to listen to people. Therefore, I urge you to at least put something in this bill so that they will be grandfathered.

The present RCMP Act, which will be replaced by Bill C-42, was enacted in 1986. Regulations were set in 1988 -- that is after Senator Campbell left the force, but at the same time, even I believe Senator Campbell will remember the Marin Commission and the McDonald Commission. All the aspects discussed at the time were that there should be a system representative of the members and there should be an independent body that would look at all issues concerning health and welfare of the members. That was not put in.

However, at the same time, in 1986 CSIS was formed. It used to be part of the RCMP, and at the time it was formed, there was a grandfather clause in the act that said all those members will continue to get the same benefits as if they were regular members, and at the same time -- you will have to check it out to see if I am lying -- some civilian members were adhered to by CSIS because they had no choice. They had to go to CSIS. It is the same as at present, that our civilian members will have no choice.

When someone makes the decision of saying "you go," you go. However, I do believe it is parliamentarians' responsibility to at least recommend that there be a grandfather clause in Bill C-42 for at least those 4,000 people that we rely on day in and day out. These people are professionals. These people do not know where they are going, and that should not be, not for an organization that shows respect, as the RCMP does.

I will further bring you to other decisions. Since 1986, the RCMP Act has not been changed at all; some of the regulations were changed. I believe Senator Nolin remembers Regulation 57 in which the Senate helped to put it in line with the constitutionality of the law at the time.

Since 1986, this is an annotated version of the RCMP Act, which contains all the changes that were done by tribunals, Federal Court, provincial courts, Federal Court of Appeal, all the way to the Supreme Court.

Now you have all those annotated decisions that were rendered just to bring you up to date with Bill C-42, and I will only give you two decisions. There are many more, and I left some copies with the clerk and you have it there.

One of them is the *Thériault* case. Senators will notice that at the end of the decision the judge that rendered the decision is at the Federal Court of Appeal. He made sure that he said a travesty of justice happened because managers in that case -- I do not know the better word to say about the case -- really messed up the case because they did not adhere to the law.

The law right now says you have a limitation period of 12 months prior to the time of the decision that goes before a tribunal. Under a major service offence, you need to know the name of

the member and also the charges against him; but if you take action after 12 months, that is it. It is done because of the limitation period.

If you look at the new Bill C-42, you will see there is no more limitation period. It says only when it comes to the knowledge of the person who makes the decision. That could be in five years because he or she has deaf ears. Then you have to prove they knew about it because someone told them, but that is okay. It could take up to four or five years, and I refer you to the decision that was rendered because there was a travesty done by the senior officer. The reason I bring up this example is, unfortunately, even in Bill C-42 senior officers are not accountable. Unfortunately they are not. Show me a place in Bill C-42 where there is an oversight that says senior officers can be accountable. I am sorry. Even the commissioner is not accountable in it.

The second place I want to bring you, a very important place because another decision was rendered by the Federal Court of Appeal, is at clause 31. It is the *Shephard* case. You also have a copy in both official languages. It says those members have to go to Federal Court and to the Federal Court of Appeal in order to get the results of the exam to get promoted so that they could at least see if there was an error in the judgment to file up the numbers; not only that, but they want to see it so they can get a better judgment, and that judgment was unanimous. It gave them that authority. If you look in 23(1) of the new Bill C-42, it specifically denies them that.

For my five minutes, I come to the conclusion that Bill C-42 was put in place only to remove all the rights that were gained -- I can go through all the rights in there -- by members going to court. It costs an awful lot of money to go to court in order to get a decision. Not only does it cost money, but I will refer senators also to clause 31. Some of you asked questions about harassment.

**The Chair:** Mr. Delisle, can you wrap up and come to a conclusion?

**Mr. Delisle:** I was about to make some suggestions about clause 31, but I am sure questions will flow.

**The Chair:** Before I go to the deputy chair for the first question, I would like to hear from the witnesses about the suggestion of the review of this bill. When the Minister of Public Safety was before the committee, he was asked whether he would support Parliament, and specifically this committee, reviewing the implementation of the bill after three years.

I would like to hear your views about a proposed review of this bill to measure the success of its implementation and whether your association would support such a view.

Mr. Banwarie, please?

**Mr. Banwarie:** I would not be supportive of a review in three years. There are fundamental flaws in the bill as it stands right now. Things are missing that are required, as I have stated, under Part II of the Canada Labour Code.

It will not address the issues that, sadly, the public has become aware of in terms of harassment, sexual harassment, all of these issues. It will not address many of these things but will give the

commissioner more power to be able to fire, dismiss and get rid of people. There is no oversight in any part of this bill.

**Mr. Delisle:** If you were around when the CSIS law was passed, there was a review. Have you checked the report? No one does.

I am sorry to say that it will be futile, because now is the time to fix this. In three years' time you will not know what it is.

CSIS's recommendation was that there be a review every five years. I beg you to check this, because we have seen them. Technically, to me, it is futile.

**The Chair:** Thank you.

(French follows - Senator Dallaire: Monsieur Delisle, je vais vous demander...)

(après anglais)

**Le sénateur Dallaire :** Monsieur Delisle, je vais vous demander de nous parler de l'article 31 dans quelques instants. Toutefois, je vais d'abord poser une question à M. Banwarie.

(Sen. Dallaire cont': The commissioner stated, when he came...)

(anglais suit)

(Following French - Senator Dallaire - une question avant de Monsieur Banwarie.)

The commissioner stated, when he came before us, that RCMP personnel are not permitted to speak negatively of the force. You indicated to us that you were in a bit of a tenuous scenario in speaking negatively about the force.

I come from an organization that had a policy, and still does, that you can criticize the force -- you do not like the food, you do not like the size of boots or the colour of the uniforms -- but you are not allowed to criticize policy. This means you cannot criticize why we are in Afghanistan instead of the Congo, but you can criticize the fact that the boots do not suit.

Is there a new policy? This brings me to the question of Mr. Rolly Beaulieu, who should have been here and we were expecting, but were told that because he is on sick leave he cannot attend. Is there a new policy that overrides this concept of public non-criticism by force members of the force in any way, shape or form?

**Mr. Banwarie:** No, we are still down by section 41 of the regulations, as it stands right now. As I said in my opening statement, we put ourselves in peril by coming here to talk.

The reason we do it is because we see the fundamental flaws and issues that need to be addressed. We are not here to say negative things about the force but to bring forward issues or suggestions or points that can improve and change it.

That is why the association exists, that is why we have come to the Senate today to speak to you. That is the fundamental reason why we are here.

In regard to Mr. Beaulieu's situation, I am aware of what is happening with him. He is a victim of intimidation and harassment, and that scenario has not been addressed. He has been off on medical leave. He has become part of the association and in the process, just like we all are, I, too, have been a victim of intimidation and harassment in the workplace. I stood up to it, and it took over five years, and the people responsible still have not been held accountable.

In his scenario, the process of reaching out and advocating for members is a healing process in itself. It gives you the ability to see things, assist members and help yourself in that capacity. He was told that he could not come to the Senate to give testimony.

**Senator Dallaire:** I had a psychological injury and was told I would not be allowed to testify in front of the International Criminal Court and, if I had, there would be a bunch of people not in jail right now, so I have a problem with that philosophy.

(French follows - Senator Dallaire cont'g - Monsieur Delisle, parlez-moi de la section 31...)

(après anglais)(Sén. Dallaire : ...problem with that philosophy.)

Monsieur Delisle, parlez-moi de la section 31.

**M. Delisle :** Pour renchérir sur l'article 41, je peux vous lire la façon dont il est rédigé.

**Le sénateur Dallaire :** Parle-t-on de 31 ou de 41?

**M. Delisle :** On parle de 41. Vous aimeriez qu'on parle de l'article 31?

**Le sénateur Dallaire :** Nous laisserons le soin à d'autres personnes de nous parler de celui-là.

**M. Delisle :** L'article 31 de la loi est celui qui donne l'autorisation de déposer un grief sur toutes sortes d'activités qui peuvent se produire où un membre se sent lésé par une décision. L'article 31 dit au membre qu'il a le droit de déposer un grief. Le membre dispose de 30 jours pour le déposer.

Dans la loi administrative de la GRC, rien ne dit que la GRC doit répondre à l'intérieur de 90, 100, 200 ou 300 jours. Certains griefs prennent cinq ans, dix ans, douze ans à se résoudre, selon la nature du grief.

Dans l'article 31, on stipule que c'est le membre qui doit déposer un grief. Le commissaire aura l'autorité en la matière sous le projet de loi C-42. Imaginons qu'il ait le droit de licencier des gens comme bon lui semble. Il leur dira qu'ils sont licenciés car, selon lui, ils ont enfreint au code de

déontologie. Toutefois, la personne, après coup, ne sera plus membre. Une fois licenciée de la GRC, cette personne ne sera plus membre. Elle n'aura plus le droit à cette option. Seuls les membres de la GRC ont le droit de déposer des griefs. Les autres n'ont pas ce droit.

Imaginons par la suite que le commissaire ait carte blanche, car c'est ce qu'il vous demande. Pour notre part, nous vous soumettons humblement que le commissaire, sous la présente loi de la GRC, a déjà cette autorité de licencier des gens. Il n'a pas besoin de plus. D'autre part, il existe des règles maintenant, à cause de la jurisprudence, qui lui dictent ce qu'il doit faire, car c'est la cour qui l'a ordonné. Je vous ai cité deux exemples, et je pourrais en citer bien d'autres. Le projet de loi C-42 fait en sorte qu'on oublie tout, on repart à zéro, et il revient au membre de s'assumer. Le membre doit déposer un grief. La plupart du temps, le grief est déposé contre un supérieur de n'importe quel niveau suite à une décision qui a été rendue. Après quoi, le ménage se fait avec qui? Qui fait l'évaluation du membre?

(The Chair: Mr. Delisle, can you come to a conclusion...)

(anglais suit)

(Following French - Mr. Delisle - c'est qui qui fait l'évaluation du membre?)

**The Chair:** Mr. Delisle, can you come to a conclusion?

(French follows - Mr. Delisle: Pour conclure, on ne peut pas accepter...)

(après anglais)

**M. Delisle :** Pour conclure, on ne peut pas accepter les changements demandés dans le projet de loi C-42. C'est incroyable! Ils enlèvent toute la bonne volonté de la part du gouvernement de dire qu'on est juste et équitable.

(Sen. Plett: Thank you, gentlemen, for being here. ...)

(anglais suit)

(Following French - Mr. Delisle - qu'on est juste et équitable.)

**Senator Plett:** Thank you, gentlemen, for being here. I have a number of questions.

You spent a fair bit of time talking about torture, which is the first time I have heard that at this committee meeting. I am not sure if that is relevant, so I will not talk any more about that, other than that I have raised it.

However, harassment has been talked about a number of times. We heard last week of 117 cases of harassment in the last 25 years, or something along those lines. We have read the report on harassment, where the RCMP are certainly in line, and let me be perfectly clear, I think we want to have a zero tolerance policy, I support that, but you will not have that in any organization. We

have heard about other organizations. The RCMP has 30,000 people. They are right in line with other associations.

I will come to my question in just a second, chair.

You seem to feel that if we had an association that somehow we would get rid of harassment. We might get rid of something, but it would not be harassment.

What is the number of cases that the Canadian Police Association has, which is an association? How do the rest of the police in the country compare with the RCMP and where do you feel the association would improve that in any manner?

**Mr. Banwarie:** Thank you, senator. The CPA represents over 52,000 police officers across the country. The biggest component would be, if I may, the Vancouver PD, which is in our backyard in B.C. They have a collective agreement which specifies the processes for management, the rules that are set out for conduct and the ramifications of breaching the conduct, as well as the membership. It is a two-part situation. It is not just for managers; it is also the expectation for the members. In their processes, whenever there is an issue, for example a grievance or complaint, it is usually dealt with within 30 days from inception to a finding. If there is still no resolution at the 30-day mark, it goes outside to a binding independent arbitration.

The binding independent arbitration is a key component in any collective agreement because if both sides -- the complainant and the manager -- cannot come to resolution it goes outside to independent body, which has a final say and the decisions are binding. In the majority of cases it is in both party's interests to work collaboratively and quickly toward resolving the situations. That is the fundamental difference in every police agency across the country versus our organization.

**Senator Plett:** How many cases of harassment are there in the 58,000 versus the 30,000 that the RCMP has?

**Mr. Banwarie:** I do not know that number but I can find out for you from the president, [Inaudible], and bring that back to the Senate.

**Mr. Delisle:** I can tell you it is almost non-existent because the onus on the association or the on the union to make sure it does not happen.

**Senator Plett:** The cases of harassment are almost non-existent?

**Mr. Delisle:** What I said is there is onus on the association or the union to represent. In the RCMP there is no onus. I have here the famous Thideau case, those ladies up in Calgary. If you want to read it, we can. However, the key point on the issue with the RCMP is as follows: A member has the obligation to represent him or herself in doing the grievance. In an environment where you have a collective agreement, the onus is on the representative. The third party has the grievance and deals with it. It is not the same person who comes to work every morning, has the same boss every day; the act obliges the RCMP to do that, which is unspeakable. You cannot have that

happening because the onus is on the member to defend and the defence is against the person that is harassing. You cannot have it that way.

**Senator Plett:** You talked about accountability and the commissioner having all these powers all by himself. Yet we were told again last week that if you have a complaint of harassment, you go to your superior and report the case of harassment. He or she makes a decision about investigation and it goes to a committee or a commission. That commission does an investigation and makes a recommendation to the commissioner. The commissioner decides whether he will go through with the recommendation or not. Yet, you seem to imply that the commissioner has the responsibility all on his own. On accountability, if the commissioner makes enough bad decisions I would think he would be accountable for them. He has a boss, like we all do --

**The Chair:** Can you get to your question?

**Senator Plett:** Yes, I am getting to it, sir. If the commissioner makes a decision that you do not agree with, you have the right to take it to court and so is that not oversight?

**The Chair:** Can I interject if I could as the chair? It is 5:25 p.m. and we started late. I would like the witnesses to be concise with the answers and the senators with futures questions to be short on their preamble and get to their question.

**Mr. Banwarie:** To be succinct here, the new bill will provide mechanisms and checks. However, if the member is not in a position financially to take the case to Federal Court, it ends right there. It is a huge cost, 10,000 to \$15,000 to take your case to court. That would be the impediment.

**Senator Plett:** The association then would be a good thing.

**Senator Mitchell:** Thanks for the great presentation. It is interesting that you would say you would be risking your career. Can you confirm for me that if there was a formal union, you would have a formal status and you would not be risking your career by being here would you?

**Mr. Banwarie:** No, I would not.

**Senator Mitchell:** I feel there is a lack of fairness here to RCMP members. Why would it be that the RCMP could get a warrant over the telephone to investigate an RCMP member's alleged infraction when that would never happen to an ordinary Canadian citizen? Why would it be that the RCMP member could possibly be forced to incriminate themselves without having access to counsel -- or a period of five days as in the B.C. legislation -- to get help, prepare answers and not just be brought into an office, sat down and forced to incriminate themselves? How could that be in Canada today?

**Mr. Banwarie:** That is a very good question. The way I look at these things, I am a Canadian citizen first, RCMP officer second. All the rights afforded to every Canadian are afforded to me first. The RCMP Act is secondary; it does not supersede the Charter. If we create a mechanism or process through collective agreements that recognizes that, a lot of this issues the public are seeing would be mitigated, dealt with and would not see the light of day in the press.

**Senator Mitchell:** One of the issues facing the RCMP is harassment of women and yet in this bill, if I am not mistaken, they actually exclude, inhibit the possibility. Can you confirm? They say a member is not entitled to present a grievance in respect to right of equal pay for work of equal value. Does that not seem to be the ultimate contradiction?

**Mr. Pinsent:** You hit it right on the head, senator. Going back to your previous point about the compelled statements, I have been trying to find out. I am a police officer and we investigate these crimes. It blew me away when I read this provision. I was told it is in the 1985 act and the 1988 regulations. I started digging into it and I have been told by people who do the investigations that the use of it is very limited. There has only been one case in the last decade where it was used on a national security file.

Are you telling me there was a code of conduct on the national security file where you used this provision -- which says you cannot use it for any criminal or civil process -- so the person who committed this grievous code of conduct issue will not be going to jail or have any real consequences? If you are going to use such a grievous violation of a Charter right, there should be grievous consequences and your conviction should be based on reasonable and probable doubt, not a balance of probabilities. They say why would you not give a statement, your conviction based on reasonable probabilities? You are lowering the bar but creating a bigger problem. That does not make sense.

(French follows --Senator Nolin: Vous me permettrez un court préambule....)

(après anglais)

**Le sénateur Nolin :** Vous me permettrez un court préambule. Monsieur Delisle, s'il y a quelqu'un autour de la table qui a à cœur les intérêts que vous défendez depuis des années, c'est bien votre humble serviteur. Je crois important que vous sachiez que j'ai accepté de ne pas soulever la question des relations de travail puisque vous avez, les deux groupes, une cause devant la Cour suprême du Canada qui verra à trancher, on l'espère, en votre faveur toute la question des relations de travail. C'est pour cette raison que mes questions ne touchent pas du tout ce pour quoi, depuis plus de 10 ans, je tente aussi de faire reconnaître vos droits.

À la question du président, vous avez qualifié de futile un examen triennal après trois ans. J'aimerais explorer cette option avec vous.

Je dois vous dire que c'est l'option qui rallie la plupart de mes collègues. C'est l'option qui nous donne, peut-être pas une police d'assurance, mais au moins une sorte de conviction. On commet peut-être des erreurs en acceptant ce projet de loi, avec tous les problèmes soulevés pour vos collègues de l'association. Il n'en reste pas moins que, d'ici trois ans, on réexaminera le tout, à la lumière de ce que la Cour suprême aura décidé.

Deuxièmement, même si on le désirait, on ne pourrait pas amender le projet de loi et satisfaire la plupart des recommandations, car on est limités par le sommaire du projet de loi.



(The Chair: Senator, would you please get to the question...)

(anglais suit)

(following French -- Senator Nolin -- ...sommaire du projet de loi.)

**The Chair:** Senator, would you please get to the question?

(French follows -- Senator Nolin: Je vous avais signalé que j'aurais...)

(après anglais)

**Le sénateur Nolin :** Je vous avais signalé que j'aurais un court préambule. Merci de me l'avoir autorisé.

J'aimerais revenir à la question de la futilité de notre examen après trois ans. Rassurez-nous qu'on tentera tout de même l'expérience dans trois ans, et que vous reviendrez nous voir pour nous dire qu'on a fait erreur à tel endroit, mais à tel endroit c'est vous qui avez fait erreur et peut-on améliorer la loi.

**M. Delisle :** Je crois qu'en théorie c'est très valable. En réalité, je vous ai cité l'exemple du SCRS. Allez voir les recommandations qui y sont contenues et venez me dire si certaines ont été changées. Cela n'a eu strictement aucun effet.

Je crois comprendre qu'environ 200 à 250 rapports sont déposés chaque année au Parlement. Je viens de vous citer celui du SCRS et vous n'en avez jamais entendu parler, or une commission s'est penchée sur ce rapport. C'est la raison pour laquelle je m'inscris en faux contre une telle mesure. Le tout paraît bien sur papier. Toutefois cela ne donne absolument rien. C'est à vous ici de décider.

Je sais que vous êtes pris par le temps. Par contre, dans notre esprit, et c'est ce qui nous porte toujours à comparaître devant vous, honorables sénateurs, vous êtes la Chambre haute. Vous êtes les personnes indépendantes d'une participation quelle qu'elle soit. C'est la raison de votre existence. C'est la raison pour laquelle nous sommes ici et nous croyons en vous. Il retombe en quelque sorte sur vos épaules de décider si, oui ou non, vous allez le faire.

Si vous voulez des exemples – et le sénateur Plett y faisait allusion – j'en laisserai avec Mme Thérien. Le projet de loi C-42 n'est pas né d'hier. Il fait suite à une multitude d'enquêtes. Il y a le rapport Brown qu'on a ici, le rapport Daoust. Les voulez-vous? Ils sont volumineux et racontent tout.

(The Chair: Mr. Delisle, please finalize your answer...)

(anglais suit)

(Following French -- Mr. Delisle -- ...racontent tout.)

**The Chair:** Mr. Delisle, please finalize your answer.

(French follows -- Mr. Delisle: Oui. Je vais faire comme le sénateur Nolin...)

(après anglais)

**M. Delisle :** Oui. Je vais faire comme le sénateur Nolin et prendre ma place. Écoutez. J'apprends vite, c'est dommage. Est-ce parce que la traduction se fait lentement?

Il est évident que, à notre avis, il ne faut pas qu'il soit adopté.

(Sen. Nolin: I have a second question...)

(anglais suit)

(Following French -- Mr. Delisle -- ... qu'il soit adopté.)

**Senator Nolin:** I have a second question. It is a very short one.

**The Chair:** It will be on the second round.

**Senator Campbell:** I just have a correction to make. Senator Plett said 718 reports between 2005 and 2011, so it is actually over six years. It was 718 harassment complaints filed.

**Senator Mitchell:** Point of order. The 117 are what got to the ECB, and that is very different.

**Senator Campbell:** I am just correcting.

My preamble is this: In the mid-1970s I was involved in forming a union in the RCMP. While we were doing that, we were conducting countersurveillance to ensure we were not being followed by our fellow officers, so you know where I stand on that. I will not get into it, either.

How many times will we have to go before the Supreme Court on this because of the way this bill is written? Will there be an end to it? Mr. Banwarie, please respond.

**Mr. Banwarie:** This November, the Supreme Court is scheduled to hear our case. Two constitutional issues have been posed. One is in regard to section 96 of the regulations and whether it is constitutionally sound and, if it is allowed to stand, how much of it the court would allow in that capacity.

The other part is in regard to the definition of "member" and whether we fall under the Public Service Labour Relations Act.

**Senator Manning:** I do not have the experience of Senator Campbell and others here in relation to how some of these things are dealt with. Could you explain, in layperson terms if possible, why you believe that staff relations representative program does not effectively represent the RCMP members on employment issues or any other issue that come before you?

I will have a quick follow up.

**Mr. Pinsent:** Here is the thing: You can try to represent but you have no ability to negotiate. Therefore, you have this concept of meaningful consultation. First and foremost, what does that mean? You can make your recommendations, but even if they are very good recommendations, but if they affect the bonus structures of the upper management -- for lack of a better term -- those recommendations will not go forward. We saw that with the wage bill.

As with any other issue, when you do not have the ability to negotiate, you are talking to a person who does not even have to come to the room to listen to you. They might have to give you a reason why they did not come to the room, which could be "we were busy that day" or "we do not see this as being beneficial to the force." What does that mean?

As an employee who has a labour relations issue, some of the SRRs do try, but they hit the same brick wall. That is why we keep saying, "You need collective bargaining and you need an independent arbitration process," because then both sides are sitting at the table at an equal setting. If you do not come to an agreement, the arbiter gets to decide. If you follow any of the recent rulings, the arbiters will normally come down on the side of the person being reasonable and not the person being unreasonable. It equalizes the process.

**Mr. Delisle:** I was a D rep for 33 years, the longest serving D rep in the system.

I was even chastised by my fellow D reps -- the two of them that are behind us who will come to testify here. I was even suspended from caucus from them because we dared to speak directly to the Minister of Public Safety.

All I am asking is whether that is fair. Is that the way we do business? It is not.

**The Chair:** There will be one correction made, and then I will suspend for our next panel. I have learned a good lesson here: Always stay on time.

**Senator Campbell:** I would like to apologize to Senator Plett. He was talking about 117 cases appealed to the external review, and I was speaking about reports to the Commission for Public Complaints Against the RCMP, so we were talking apples and oranges there.

**The Chair:** I would like to thank our witnesses for appearing before us.

Honourable senators, we continue our study of Bill C-42. With us are two representatives from the National Executive of the RCMP Staff Relations Representative Program, Staff Sergeant Abe Townsend and Staff Sergeant Mike Casault. Gentlemen, welcome. I understand you have an opening statement to make. Please proceed.

**Staff Sergeant Abe Townsend, National Executive of the RCMP Staff Relations Representative Program, as an individual:** Good afternoon, Mr. Chair, and honourable senators.

We are pleased to be here to assist in your study of Bill C-42. We appear on behalf of the membership of the RCMP comprised of approximately 19,000 regular members and 3,800 civilian members, both categories hired and accountable under the RCMP Act. Regular members are easily recognized. Civilian members include, yet are not limited to, telecom operators, intercept monitors, forensic laboratory analysts, criminal analysts, computer technicians and pilots. All are RCMP members who serve across Canada and internationally.

During my service I have lived in four different provinces and two territories. My last uniformed posting was as the detachment commander in Yarmouth, Nova Scotia at the rank of staff sergeant. I have been elected to represent since 2004. Mr. Casault served in the province of British Columbia and was elected to represent our members in 2008.

The staff relations representative program is a non-union labour relations program for all members of the RCMP. The program is authorized by law and is the officially recognized program of representation on all issues that affect the welfare and/or dignity of RCMP members. Our program is comprised of 42 representatives, democratically elected from and by the membership in all territories and provinces.

While we appreciate some aspects of Bill C-42, we have some areas of concern that we wish to express on behalf of our membership.

We have heard much criticism directed towards the present RCMP Act and the need to change. Unfortunately, there has been minimal reference to the report of Justice René Marin. His report was the framework for the RCMP's current disciplinary and grievance system. In 1988 the emphasis was to have discipline administered and dispensed at the lowest possible level. The 1988 act brought into play procedural fairness and natural justice. Emphasis was on identifying weaknesses and unacceptable behaviours and taking appropriate remedial action. Grievance rights and processes were introduced, as was the external review committee. We believe some managers at all levels of the organization did not do what the 1988 act encouraged and empowered them to do, and we find ourselves here today.

Accountability is no stranger to our members. As peace and public officers, they are accountable to the rule of law. Accountability touches every aspect of their job. The vast majority of our members meet and exceed those expectations.

Our members execute their duties realizing the dangerous and conflict-ridden environments which they work in. We realize internal and external review may be the by-product of honourable service. While the need exists for resolution to be timely, it must not be at the expense of natural justice and procedural fairness.

The 1988 RCMP Act contains the necessary authorities, but they have not been utilized properly. Managers at all levels have not been held accountable for their behaviours, actions and inactions. What will change with this new legislation?

I was encouraged when reading your hearing transcript from April 22 when your chair introduced the potential of a review provision. This was absent in the 1988 act and may support us in living the intent of Bill C-42.

The majority of our members will serve with distinction without internal conflict; but for the few who do, we must have legislation that will serve in a fair and constructive manner. Our managers must be trained to properly utilize the authority available.

There has been much debate in relation to the RCMP culture. Millions of taxpayers' dollars have been spent to examine the RCMP on many important issues. This is an investment in our national police force. My concern is not with the investment but our ability and desire to pay real attention to the recommendations of these various reports, be it the Task Force on Governance and Cultural Change in the RCMP, the Reform Implementation Council, reports of Dr. Linda Duxbury or the Pay Council Review on RCMP Internal Discipline System. All reports have been made with the goal of advancing our organization.

If the recommendations of the Pay Council Review on RCMP Internal Discipline System were implemented when written in 2005, would the criticism and frustration we now realize in relation to discipline have been avoided? Yes, we welcome the addition of a review provision to Bill C-42.

Bill C-42 will see the commissioner given broad authority to make rules. These rules must have accountability on outcome. We look forward to working constructively in building the rules. Principles of procedural fairness and natural justice must remain. The legislation and the rules that follow cannot simply be about dealing with a few bad apples but must nourish the entire orchard. We must invest through learning and development.

With regard to conduct, Part IV we commend the authors for section 36(2). As a member, as a former detachment commander and as a representative, I believe that if we adhere to these principles we will find success.

Prior to concluding, I want to return to our civilian members and the notion that they do not exist within the RCMP Act. They have been subject to the terms and conditions of that very legislation. These are 3,800 Canadians who take pride in and are committed to being members of our national police force.

This means that 3,800 people will potentially be forced outside of police accountability legislation. The rationale for this is the need to increase human resource efficiencies. I have seen nothing substantive in support of this rationale, nor a risk assessment regarding the public safety needs of Canadians.

Thank you, and we welcome any questions the committee may have.

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

If senators will note the clock, we will go until twenty to seven. I ask all of my colleagues to try to keep their preambles to a reasonable length and get to their questions. I will point that out

during the last panel a number of senators did not get to ask a single question. That is not fair, so please govern yourselves accordingly.

**Senator Dallaire:** I will ask you gentlemen in the most direct way possible. You have been in staff relations for a while now.

Do you have a career in the RCMP?

**Mr. Townsend:** Absolutely, I had a career in the RCMP before I became a staff relations representative. If I choose to leave this form of employment within the RCMP, I still have a career in the RCMP.

**Senator Dallaire:** Does your colleague agree?

**Staff Sergeant Mike Casault, National Executive of the RCMP Staff Relations Representative Program, as an individual:** We currently have about 210 sub-reps who do what we do off the side of their desks, and they are able to take matters forward as well.

This could be a patrol supervisor or a constable on the road, and they deal with issues, much like Mr. Townsend and I do as divisional reps, without fear of the organization going after them. There is no fear there.

**Senator Dallaire:** Gentlemen, have there been any cases of staff relations members, who have been elected by their colleagues, in which these gentlemen or ladies have ever been in any way held back or held up, or maybe even put behind, “back-squadded” from others because they have been engaged in staff relations in their career? Is this a good career path?

**Mr. Townsend:** To the best of my knowledge, we represent as aggressively as the circumstance and situation warrants.

I cannot think of any SRR who has been held back. I know of SRRs who have represented aggressively and then chose to leave the representative program to explore other avenues of endeavour within the RCMP and were quite successful. I know of representatives who stayed in the SRR program and represented aggressively.

The myth there that we will hold back on representation because we are worried about reprisal, I can speak for myself personally. I came into this program as a staff sergeant and I will leave as a staff sergeant. My career path was set many years ago.

**Senator Plett:** Chair, I was guilty of the long preamble so I will endeavour to change that.

Last week we had the head of the Canadian Police Association, Tom Stamatakis, along with witnesses. They seemed to think that if we had a union it would solve many of the problems, if not all of them.

I would like you to tell me what your feeling is on that and whether we do not, in fact, have a little bit of a union with SRRP. That is certainly an association of some form. Tell me what your feeling is about the union and your organization.

**Mr. Townsend:** Thank you for the question, senator. I did not come here to speak to that, but I am more than happy to.

Our program has been in existence for many years. It is supported by the RCMP financially. We have strived, over time, to become very independent, to the point where we are not told, in any miniscule way, who we can represent, nor are we told where that representation must go. We follow the laws of Canada. We stay within those boundaries that everyone has to stay within. There are rules and regulations around most things in life.

That being said, we can and do represent aggressively, and we strive for independence. While the RCMP does support us financially, they do not control us. They do not control our representational model.

**Mr. Casault:** I echo what Mr. Townsend says. We have the ability to take stuff outside the organization as well if we are not satisfied with the direction that it is going.

We have been in court on several occasions with regard to a whole array of different scenarios our members have faced. To say we are ineffective or if we are associated, we do everything they do, we are just called something else: we are staff relations representatives.

**Senator Plett:** We were told by previous witnesses that if I am unhappy with the rule that the commissioner sets down, I ask whether I can take it to court. They said, yes, you can, but it will cost \$15,000 or \$20,000 to do that.

Would you go to bat for me as a member of the RCMP if I chose to take that route?

**Mr. Townsend:** Approximately 17,000 of our members voluntarily joined what is referred to as the Mounted Police Members Legal Fund.

They voluntarily joined that fund several years ago. Some, I believe, wise people decided that the means were necessary to get decisions outside the corporation of the RCMP, and that does take money. The Mounted Police Members Legal Fund was established, and we have 17,000 voluntary members. There is a war chest we can use, as members, to advance the interests of other members, whether collectively or individually.

**Senator Mitchell:** I am interested in a couple of things. If your process is so effective, why have I, and many of us, heard over and over again that there are so many members who have problems and are terrified to bring them forward to that process because they do not feel there is independence and fear reprisals, even if you do not?

**Mr. Townsend:** Without being argumentative, we have approximately 24,000 members. There will be instances of workplace issues.

I can speak for myself, and I was a division representative for several years, that the notion of not coming forward to the division rep was not an issue in the province in which I served. I believe that continues to be the case.

How satisfied a client may be with the result is completely different from the ability to carry forward the issue and advance it on behalf of the client. It becomes an issue of did you work hard enough for me? Did you achieve what I wanted? If you did not achieve what I wanted, why did you not?

**Senator Mitchell:** You make the point that you get aggressive sometimes. What does aggressive look like? What hammer have you got? If you do not have independent arbitration process or a collective bargaining hammer, what hammer have you got?

**Mr. Townsend:** We have the internal grievance process, which could take another afternoon to speak about. I think the hammer that we have is probably the most successful hammer that any labour representative would have. It is the ability to advance the interests of the entire corporation through the individual. No manager who wants to sustain an operation can do so with a warehouse full of disgruntled employees.

**Senator Nolin:** I do not know if you were here this afternoon when Mr. O'Rielly talked about your role vis-à-vis the civilian members. Are you familiar with the problem between Bill C-45 and Bill C-42?

**Mr. Townsend:** Absolutely.

**Senator Nolin:** Good. Talking about being aggressive, what are you doing to protect those almost 4,000 people? Treasury Board has their future in their hands now. We have heard that normally when there is a union, someone represents those members with the Treasury Board, negotiating with them and ensuring the privileges and rights of those people are protected. Are you doing the same thing for the 4,000 civilian members of the RCMP?

**Mr. Townsend:** Absolutely, and we have carried this as a major item of caucus for the past 20 years. It has had its peaks and its valleys to the point where at one moment in time they were going to convert all civilian members to public servants. At another point, they rightsized the civilian member category so that all but 202 would have been saved in that category. We take the representation of civilian members seriously for many reasons.

First, these are people who came into the RCMP well trained. They are specialists in their field and they dedicate themselves to the RCMP and the national security public safety interests of Canadians. As their representatives and as fellow members of the RCMP, we recognize that we do not see the attrition rates in the civilian member population that we see in the public service category population. These are people who invest in the RCMP. In a lot of ways, it is no different from our regular members that invest in a career in the RCMP. We take the representation very seriously and we will represent them in every venue that is available internally and externally.



**Senator Nolin:** We have heard the Treasury Board mention that they are already --

You want to add something?

**Mr. Casault:** If I can.

I said this to the Brown task force. The quick answer is -- for the ones Mr. Townsend mentioned -- you take the 202 aside, and the rest of the employees identified in the COE category employee studies, and move them to the special constables' category within the RCMP. A special constable category exists and they have all the rules and regulations that a regular member has and the benefits that go along with it. They are looked after under the act. I do not know where that is with Treasury Board, but that is an option.

**Senator Nolin:** That is exactly my question to you because you are representing them aggressively. Talk to us about the status of that negotiation.

**Mr. Townsend:** In fact, we are representing them aggressively and without prejudice, we have engaged our SRs in relation to the examination of any conversion if in fact that is the decision of government. We do that without prejudice for a reason. At the end of day, this may be a decision that is decided in a court of law. That is how far we will carry forward our representation of these members. The deeming clause only supplies an authority; it does not demand action. We hope that at some point good sense will enter the picture in relation to the value-added these members offer to the public safety of Canadians. My fear does not stop with civilian members because that deeming authority does not stop with them.

If Treasury Board uses that authority once, what makes me think they will not use it a second time deeming that a certain job function within the regular member community something that can or may be done by a public service employee?

**Senator Nolin:** That is exactly why you need a report of the force.

**Mr. Townsend:** We take it very seriously, Mr. Chair.

**Senator Day:** Mr. Townsend, I would like to explore the independence because I think for you to do the job that is expected of you, it is critically important. Are your offices separate from the RCMP offices? Do you have a budget to keep your own offices?

**Mr. Townsend:** Yes, we have a budget to maintain function. We have some SRs who are co-located within large detachments and headquarters environments or have stand-alone offices. On the independence piece, from a representational perspective do we have the ability to communicate with our members? I can say that as a division rep and now as a national executive that I have not once had management try and control the message I wanted to send out to the membership. I control the message I send to the membership. When I travel to represent, there are confidentiality aspects within the current RCMP Act that protect the confidentiality between the member and the representative. Having been an SR with three different commanding officers and now at the national level, when I travel to this meeting my expense claim is travel, SR related

function, internal and external meeting. There is no control beyond what is mandated in the Financial Administration Act.

There is functional and optical independence if I can differ my message as a representative, and can represent from the client base without management saying you cannot go here or there.

The other thing that is within the agreement we have with the commissioner that augments our own constitution -- we have our own constitution as a program and it is available for every member to see as well as our agreement with the commissioner -- is that managers are mandated by their chain of authority to deal with SRs, to engage SRs in relation to policy changes and/or new policies that may affect the welfare and dignity of the membership.

There was a flurry of activity last week in relation to the RCMP controlling its senior executive and the dealings with parliamentarians. I can tell you with the utmost assurance that does not reach down into the SR program.

**Senator Day:** My question is going to independence and there is nothing that gives you more independence than financial independence. You indicate your expenses. Who signs off on those? Do all the SRs have a budget they operate each year, separate from the commissioner?

**Mr. Townsend:** Yes, we do. It is separate from the commissioner. They are established budgets for the program nationally and for each division representative in the divisions.

**Senator Day:** Who establishes the budget?

**Mr. Townsend:** The budget for the program has been established jointly over the years between us and the commissioner, and it meets the needs of the program. The budgets in the divisions are established over time between the commanding officers and the representatives in the division to meet the needs of the program in the division.

**Senator Day:** This court case you talked about is out of the ordinary. How do you get money for out-of-the-ordinary expenses like that?

**Mr. Townsend:** We can apply for legal fees at public expense through the Treasury Board directive on that, or we have the support of the Mounted Police Members Legal Fund, which is a separate corporation that we belong to, along with 17,000 other members.

**Senator Patterson:** I would like to take a little different tack and ask you about relations with the RCMP commissioner. How often do you meet to discuss membership issues?

**Mr. Casault:** We meet as often as needed. We can contact him by phone or in person, and we meet with him if he is on the road. Whenever we have own an opportunity to meet with him, we meet with him. He makes himself available, or makes available his delegates if he is absent.

**Senator Patterson:** Thank you. I would like to ask you if the staff relations representative program was consulted during the drafting of Bill C-42. If so, did you raise concerns about any elements of Bill C-42, and is your membership satisfied with the response?

**Mr. Townsend:** In relation to the actual drafting of Bill C-42, no, we were not consulted on that piece. However, prior to that, we had been consulted in relation to Bill C-38, which was the predecessor bill to this, and we had eyes on Bill C-43. Much of those two pieces of legislation were adopted into this. The actual drafting of the document Bill C-42 was done in cabinet confidence, and we were not inside that cabinet.

Immediately following the tabling of Bill C-42, the labour relations initiative team met with our internal affairs committee, because the regulations and the rules that will flow from this are where the rubber will meet the road and are where the work will get done. That will be the operationalizing of this legislation for the most part.

Our SRs are engaged in the building of the regulations, rules and the process. Additionally, in relation to the predecessor legislation, we were consulted.

There are areas where we have concern. We have concern in relation to the warranted search of an RCMP member's residence under an administrative piece of legislation. We realize that similar authority exists in some other police legislation within Canada. We are hoping to build regulations that will put very strict parameters on that process to obtain beyond the judicial process, so that it will not be used recklessly.

Similarly, we have concerns in relation to the authority of the CRCC to order a member to provide a statement during a CRCC investigation. That will be somewhat different than the current situation where authorities order members to give statements under the code of conduct.

That being said, we have already tasked our internal affairs committee to look at the ways and means to seek legal advice at public expense, because it will be a new area. Not that it will necessarily be needed every time, but we want to ensure that we have some background done, so that we are not caught short when this is exercised in the first instance. We do not believe it will be exercised recklessly -- at least we hope not.

There has been consultation; it is ongoing, and it is a work in progress on the regulations and rules to come.

**Senator Campbell:** Do you have any concerns regarding the inability of someone to refuse to answer a question that may tend to incriminate them, either criminally or civilly?

**Mr. Townsend:** Absolutely, and that is why we want to have our powder dry in relation to legal fees at public expense, because to refuse to answer may, in itself, be an offence that would be punishable similar to a summary conviction offence. To answer and then find yourself down the road as a result of derivative evidence from the answer involved in a separate process that is not civil, criminal or administrative -- we have huge concerns around that, absolutely.

**Senator Campbell:** One of the things that concerns me is that this act actually takes away the freedoms that normal Canadians have. In some cases, it takes away the normal freedoms that Canadians cherish and have fought for.

Are you concerned that the members of the RCMP are being treated differently from Canadians when it comes to answering statements and someone coming into your house with a warrant? Is that a concern, and how will you deal with that?

**Mr. Townsend:** That is a concern, Senator Campbell. I do not think any time in my past 32 years of service I have seen such a high level of accountability and the expectation that the Canadian public have regarding accountability for police officers. That being said, I think that may be part of what is driving us to where we appear to be heading with this legislation.

In dealing with it, we will ensure we have our powder dry in relation to legal representation for these members who encounter these new authorities that may come as a result of this legislation. My advice and yours may not be as good as the advice they would get from legal counsel who would have solicitor-client privilege.

**Senator Campbell:** One thing that concerns me is that if I say, "I am not talking to you," I have just committed another offence under this bill. If you come in, question me and say, "We want to talk to you about the issue" and I say, "I will not talk to you. I have rights, and I will speak to you when I have my lawyer present," I have just committed an offence in trying to protect my rights.

That is what bothers me. I do not have any difficulty with someone being investigated and they have a lawyer sitting there and the investigators come in and conduct their investigations. We understand how to do investigations with a lawyer present. When I say, "No, I want to use my rights as a Canadian," I have broken a section here. I would be guilty.

**The Chair:** Senator, can you get to your question?

**Senator Campbell:** What is the answer to that? We will be doing clause by clause on this, and I do not want you guys to be dipping into your legal fund for things that we could have changed here so you would not have to go to the Supreme Court.

**Mr. Townsend:** The easiest answer to that would be built into the regulations or into the act itself that a member would be afforded, prior to the execution of the order, the opportunity to seek legal advice at public expense. That would be such an extraordinary step for an investigator to actually cross that threshold. That would be a bare minimum that, prior to crossing that threshold, the member does get legal advice at public expense.

**Senator Campbell:** Thank you, sir.

**Senator Dallaire:** The requirement for the commissioner to be able to delegate down a series of power and responsibility to lower ranks makes a lot of sense to me. I lived under this and I think that is appropriate. However, for people to be given that there must be a whole raft of education,

training, experience and development -- very structured and established -- before we give them that rank, level or responsibility with that authority.

Nowhere in this thing does it talk about how you will realign the leadership structure to meet this.

Did anyone bring to your attention their concerns that this may exacerbate the situation because those in authority do not have the skills, knowledge or experience to handle this much authority?

**Mr. Townsend:** We spoke to what you are asking about in our opening remarks and at the parliamentary hearings as well. We heard in the earlier testimony here about driving discipline and accountability down to lowest possible level so that the corporal or sergeant running a detachment would have the authority, the knowledge and the skills to execute on conduct infringements so that they do not become a boondoggle of legality among lawyers. We have seen, through parliamentary hearings, the commitment of the commissioner to ensure that there is training so that we do not have the situation we had in 1988 where people were given authority they did not know what with and it went by the wayside. We have seen that commitment and it is built within the labour relations initiative working group. The chair of our training committee is tasked with ensuring that happens.

If this legislation is not dealt with properly, if there is no accompanying training so that those in power can use it for the betterment of the organization, it will not take 30 years for us to realize our mistakes. It took from 1988 to the present to realize our mistakes with the 1988 act. If we do not deal with this one appropriately, it will not take us 30 years to find that out. We will see that within the next three to five years. If a three-year review is ordered, and if I am still around, I would like to come back and give you the report card on the training and the commitment to build the leadership within the organization down to the lowest possible level so that things do not get carried away, it does not become a boondoggle, and there is real leadership at the front lines of our organization.

**Senator Dallaire:** I was asking whether they are able to handle that now, and you essentially told me that they are not and they will need a set of skills to be able to do it. I was leading to how long you think they need to do this.

**Mr. Casault:** I will ask Mr. Townsend to speak to that. However, training has to start as soon as you get into the organization, because the most junior member may be the leader of the organization in 25 or 30 years. The training must be ongoing and it must start at the lowest level, so that members know the RCMP Act as a whole from the time they begin until the time they retire. That is potentially not there now, and that is a key element.

**Senator Plett:** I do not want to flog a dead horse, but I want to continue along the line of Senator Campbell's question. You gave a good response, and I am not saying that I disagree with it. However, where a member is compelled to provide a response to a question, any response given cannot be used against the member in any civil administration or criminal proceeding except a

conduct proceeding where it involves an allegation that the member gave a statement knowing it to be false, which is consistent with the requirements of the Charter.

That has not changed in Bill C-42. Yet, we are hearing that that is not a good thing, that members can incriminate themselves because they do not have proper legal representation. From what I understand, that has not changed since 1988.

**Mr. Townsend:** In fact, in the 1988 act it was in relation to code of conduct investigations. This new authority extends into the Commission for Public Complaints Against the RCMP, by today's title, or the CRCC by tomorrow's title. It extends that power beyond what existed in 1988. For all practical purposes it is not an authority that was used in any great way from 1988 onward. Investigators rarely, if ever, use it.

This is a new act; this will be a new authority to some, and our concern is that it may be used recklessly. Our members extend themselves into dangerous and hostile environments in service to Canadians. Although there is heightened accountability because of heightened responsibility, we have to extend to our members the bare minimum of access to legal counsel at public expense before the state takes the extraordinary act of ordering them to give a statement.

**Senator Plett:** Do not get me wrong; I am not disagreeing with that. I agree that our members need the utmost of protection. You have my support in that. You said it was rarely used, and there is no indication in Bill C-42 that it will be used any more often now than it has been since 1988.

**Mr. Townsend:** To clarify, the distinction in the new act is that it will be there for the commission for public complaints to do investigations. The new act is called the CRCC. That authority did not exist in the old act for public complaint investigations. It will in the new act. It existed in relation to conduct investigations in the old act, as it will in the new act.

It is an extraordinary step. It is not a stretch to envision a member who is involved in a highly stressful and tragic situation suddenly being banged by an investigator indicating their authority and demanding a statement. This stuff happens in the middle of the night. It is a dangerous road to go down without counsel. If I were such a member's representative, I would tell him or her not to say a word other than that they will talk to a lawyer and get back to you.

**Senator Campbell:** I understand that you are asked to make a statement and that it will never be used against you in a charge of perjury. I have operated under that as coroner. The difference is that when you show up and I ask you questions, there is a lawyer sitting beside you. Every time I ask a question, there would be a question from the lawyer saying, "We have the protection of you." That is the difference. It is exactly as the staff sergeant said; it is two in the morning, you have been involved in a shooting, and the next thing you know you are in the back seat of a car being taken to the detachment for questions. It is neither the time to be answering nor the time to be asked the question. I understand the perjury concept of that. The fact is that they should have some legal counsel there to advise them. The counsel given may be that we will talk to you tomorrow morning but we are not talking right now.

**The Chair:** To clarify the record, there is a section that states:

The Commission shall permit any person who gives evidence at a hearing to be represented by legal counsel.

**Senator Campbell:** By then you are already in trouble.

**Senator Mitchell:** You said that if this system were not working you would have a warehouse full of disgruntled employees. My rhetorical question is: How do you know that you do not?

The Simmie Smith study was done in B.C. with 462 people who came forward voluntarily in privacy. That included only five men. Men were cut off after five because women felt inhibited to speak. There are 300 people in a class action. The RCMP has not done an assessment across the country like the one done with Simmie Smith.

Why has your association not gone across the country and done what Simmie Smith has done with the membership to find out how many disgruntled employees there are in the warehouse?

**Mr. Townsend:** First, we do not have an association.

**Senator Mitchell:** That begs the question.

**Senator Dallaire:** There are staff relations.

**Senator Mitchell:** It is the same thing. Could you take the initiative to do that and why would not you? If you are representing these people and they have these problems, if there is smoke there has to be fire. Why would you not insist that Simmie Smith goes across the country and does it everywhere? You do not know how broadly based the problem is. A union would.

**The Chair:** Do you want to reply, Mr. Townsend?

**Mr. Townsend:** In fact, in unionized and associated work environments, there are issues of harassment and issues of sexual harassment. In fact, the Commissioner for Public Complaints Against the RCMP did a statistical review for those organizations that would provide information. Statistically, their findings were no different.

**Senator Mitchell:** They do not add up to 462 even.

**Senator Nolin:** You will think I am stubborn, but I have another kick at the can.

I want to know about the status of the negotiation with Treasury Board. That is your responsibility. Tell us where it is at. What is your toughest point of discussion with them? Where can we help?

**Mr. Townsend:** I take it you are going back to the civilian member issue?

**Senator Nolin:** Yes, of course.

**Mr. Townsend:** We have a number of discussions ongoing with Treasury Board that we could use your help with.

In relation to the civilian member issue, without prejudice, we have engaged in relation to the job classification review; in relation to identifying components of challenge, including the Bill C-45 challenge where members converting will be disadvantaged; in relation to components of representation, where in fact as a result of a pay council review and a self-survey by the civilian members they wanted to remain represented by the SR program and remain civilian members.

Those are points of discussion with RCMP management and/or representatives of Treasury Board, but that is only part of the picture. The other part of the picture is external to the force that we are preparing to challenge the decision of government or the decision of Treasury Board because the decision of government may, in fact, be to pass Bill C-42 as written, which gives authority to Treasury Board at some future date. In fact, the challenge, the external challenge and internal challenges, may not come to fruition until some further date when they choose to exercise this newly granted authority, if in fact it is Parliament's will to grant that authority.

**Senator Nolin:** I do not know if you read the transcript of testimony of Minister Toews, but he was quite forceful stating that the government wants, of course, not to act unfairly for those employees.

**Mr. Townsend:** Absolutely, make no mistake. That has been highlighted and documented and archived in the appropriate places.

**Senator Nolin:** Thank you.

**Senator White:** Thank you very much. Good to see both of you here today.

If the category of employees, which was a project back in 2003 that would have looked at the grandfathering of civilian members and was refused by Treasury Board at that time, had been accepted in 2003, would this still be an issue for you?

**Mr. Townsend:** I think that, in fact, there was an independent external study done in 2003 that came up with three recommendations.

One of the recommendations would be the preferred recommendation, to convert all civilian staff to the civilian member category and not the public service category. That was the number one recommendation, but that was not one that was suggested. What was suggested was their second recommendation, to turn all civilian members into public servants, and there were grandfathering discussions at the time.

However, subsequent to the first utterance of that senior executive committee decision, there was some sober second thought and some reflection. Under Commissioner Zaccardelli the direction was not just to slash and burn but to do a comprehensive examination to look to rightsize the civilian member category and retain those that did provide direct support to law enforcement; and the others that did not fit within the define of category for civilian member, have those folks



grandfathered and subsequently the positions converted to public servant. They would be grandfathered for the life of their career in the RCMP, and when they leave, the next person to occupy that seat would be a public servant. If that was followed through, this likely would not be a matter for discussion right now.

On the rightsizing review, that was done at the time by Adrienne Mah Karif -- I believe she was an inspector at the time -- and Barb George, Deputy Commissioner HR; and Commissioner Zaccardelli. When the number crunch came down, of the 3,800, 202 positions were put for a third round of review because the remainder were deemed appropriately categorized within the definitions of civilian member to support law enforcement, public safety interests of Canadians, and now we have turned the apple cart completely around. This is the third time around for us.

**Senator White:** Are there any other police services in Canada that would see themselves with three categories of employee: a public servant, a civilian member mix and a regular member?

**Mr. Townsend:** Yes, there are, but we have four categories of employees.

**Senator White:** Do you include special constables?

**Mr. Townsend:** We have municipal employees as well in some detachments, but they have sworn peace officers and unsworn peace officers and clerical help. It is not unique to the RCMP to have three or four categories within an operation as big as ours. You can almost expect it.

**Senator Dallaire:** We went through an extensive military civilian integration in the early 1970s and, in so doing, assessed all military positions as to whether they could be done by civilians. You have gone through this exercise now of assessment on the civilian side.

Do you not see the possibility of an extensive review of all uniformed positions within the RCMP and moving some of those into the public service?

**Mr. Townsend:** In fact, we have just gone through a year-long HR reorganization or civilianization exercise, and some RM functions, administratively for the most part, have been deemed to be functions of a civilian, whether it is a civilian member or public servant.

We had concerns about that because one thing that we do have to focus on, and we do focus on in representing all the members, is their ability to deploy in policing functions. We are a big organization but relatively small when looking at the breadth and depth of our responsibilities. We need a critical mass of policing resources that we can deploy to things like the Olympics or the G8/G20, and we realize it is the responsibility of the commissioner, but it is our members being deployed to these things. We have concerns around over-civilianizing a regular member function. You end up with the same people over and over going to these same major events, and what gas is left in the tank? Like I say, we are a big organization, but given our responsibilities, we are not that big.

**The Chair:** Gentlemen, thank you for being here and for sharing your comments with us. We very much appreciate the work you are doing on behalf of the regular and civilian members of the RCMP.

Thank you, it being now 20 to seven, we will suspend for 30 minutes.

(The committee suspended.)

(The committee resumed.)

**The Chair:** I would like to welcome back all honourable senators, members of the public with us in the room, and viewers across the country watching on television or the Web. We are meeting to resume consideration of Bill C-42. We have heard from many witnesses and are now at the stage where we will begin going through the bill, clause by clause.

Before we do this, I would like to remind senators of a number of points as far as procedure is concerned. If at any point a senator is not clear where we are in the process, please ask for clarification.

In terms of the mechanics of the process, I wish to remind senators that when more than one amendment will be moved in a clause, the “. . . amendments should be proposed in the order of the lines of a clause.” This is noted in *Beauchesne’s* at citation 697(2). Similarly, Marleau-Monpetit at page 653 notes that: "Amendments should be proposed following the order of the text to be amended."

Therefore, before we take up an amendment in a clause, I will be verifying whether any senators had intended to move an amendment earlier in that clause. If senators do intend to move an earlier amendment, they will be given the chance to do so.

If a senator is opposed to an entire clause, I would remind senators that the proper process in committee is not to move a motion to delete the entire clause but rather to vote against the clause standing as part to have bill. On this matter, I refer you to *Beauchesne’s*, citation 698(6), which notes that: “An amendment to delete a clause is not in order, as the proper course is to vote against the clause standing part of the bill.”

Similarly, Marleau-Monpetit at page 656 states that:

An amendment is out of order if it simply attempts to delete a clause, since in that case all that needs to be done is to vote against the adoption of the clause in question.

I will remind senators that some amendments moved may have consequential effects on other parts of the bill. It is important that the committee remain consistent in its decisions, and that they be consistently applied throughout the bill. I again refer senators to *Beauchesne’s*, citation 698(2), which notes that:

An amendment must not be inconsistent with, or contradictory to, the bill as so far agreed to by the committee, nor must it be inconsistent with a decision which the committee has given upon a former amendment.

In the spirit of this statement, it would be very useful to this process if a senator moving an amendment identified to the committee other clauses in the bill where this amendment could have an effect; otherwise, it would be very difficult for members of the committee to remain consistent in their decision making.

Staff will endeavour to keep track of these places where subsequent amendments need to be moved and will draw our attention to them.

Since no notice is required to move amendments, there could, of course, have been no preliminary analysis of amendments to establish which ones may be consequent to the others and which may be contradictory.

If members have a question about process or the propriety about anything going on, they can raise a point of order. The chair will listen to arguments, decide when there has been sufficient discussion of the matter of order, and make a ruling.

The committee is the ultimate master of its business within the bounds that are set upon it by the Senate, and a ruling can be appealed to the full committee by asking whether the ruling shall be sustained.

As chair, I will do my utmost to ensure that all senators wishing to speak have the opportunity to do so. For this, however, I will depend on your cooperation. I will ask all of you to think of other senators and to keep remarks to the point and as brief as possible.

Finally, I wish to remind honourable senators that if there is ever any uncertainty as to the result of a voice vote or a show of hands, the cleanest route is to request a roll call vote, which provides clear results.

Senators are aware that any tied votes negative the motion in question.

I would ask if there any questions on what I have just stated. If not, I believe we can proceed.

**Senator Day:** I have a couple of preliminary points: I am assuming everyone at the table is a voting member, in the event that a roll call vote is called?

**The Chair:** Yes, that has been confirmed.

**Senator Day:** Second, approximately a week ago when we had hearings, I asked a question of Mr. McPhail with respect to section 45.16(10). It is about the wording: "Despite subsection (9), the Commissioner may rescind or amend the Commissioner's decision. . . ." Mr. McPhail said: "It is an interesting point, because why would it not say the commissioner may rescind or amend his or her decision."

Have we heard anything back from Mr. McPhail or the government with respect to that point that was raised?

**The Chair:** To my knowledge, we have not received anything in writing. For your information, we do have representatives with us who are not at the table at the present time. They are Mark Potter, Director General, Policing Policy Directorate, Public Safety Canada; and Superintendent Michael O'Rielly, Director, Legislative Reform Initiative, Royal Canadian Mounted Police. We also have Agnès Levesque, Counsel, Justice Canada.

I could call them forward if you wish to have a further interpretation.

**Senator Day:** It is good that you have them here for clarification. We did receive something else in writing from the government that clarified the point, so I did not have to pursue it. If they are instructed as to how to explain this situation, that would be helpful. If they are not, then we will have to go ahead without it.

**Senator Manning:** Thank you, Mr. Chair. I am not sure, but are you planning to ask these people to come to the table when we need them, back and forth, or will they come and stay?

**The Chair:** I am at the pleasure of the committee.

**Senator Manning:** I have something that was raised here today that I am a little concerned about, and I would like to ask somebody a question.

**The Chair:** I will put it to the committee: Could we have the witnesses come up to be asked your general questions and then we will ask them to remove themselves when we begin clause by clause? Is that agreed?

**Hon. Senators:** Agreed.

**The Chair:** Mr. Potter, Superintendent O'Rielly and Ms. Levesque, please come to the table.

Before we start clause by clause, I would ask that if you have questions of the witnesses, take the time now to do that.

**Senator Day:** My question is in relation to a question I put to Mr. McPhail when he was in attendance relating to section 45.16(10). In the English, it says the commissioner may rescind or amend the commissioner's decision and in French it says the commissioner may amend his decision.

I wonder if the English should be the same as the French or if the French should be as the English and who is the other commissioner?

**The Chair:** Who would like to respond to the senator?

**Mr. O'Rielly:** Mr. Chair, there is only one commissioner in the entire act. There is the commissioner as appointed under section 5 and the wording here in English means same as in

French. It is the commissioner may rescind or amend the commissioner's decision. It is the same commissioner both times. It is strangely worded. The wording is as it currently exists in the act; it has not changed and the only change is the reference to a section number.

**Senator Day:** Would the government consider that amendment to make the English the same as the French? The commissioner may amend his decision if he has new evidence.

**Mr. O'Rielly:** I am not sure I can speak for the government.

**Senator Day:** I asked this question a week ago and we were waiting for a decision.

You have no instruction as to whether you would accept a friendly amendment in that regard?

**Mr. O'Rielly:** I have no instruction, senator.

**Mark Potter, Director General, Policing Policy Directorate, Public Safety Canada:** We have no instruction, but I am not sure what your amendment would materially change.

**Senator Day:** It would legally change the wording in English to be the same as the wording in French.

**Mr. Potter:** I understand.

**Senator Day:** If you apply the word material to mean something different from legal, I would like to refer to the legal since we are voting on a bill here.

**Mr. Potter:** I understand senator and I think my colleague gave an explanation as to why we do not feel there is a contradiction or --

**Senator Day:** I heard your colleague say he did not have instructions from the government.

**Mr. Potter:** We do not have instructions.

**Senator Nolin:** To what extent is your amendment needed?

**Senator Day:** It is confusing and misleading in English.

**Senator Nolin:** In French, it is quite clear.

**Senator Day:** It is absolutely clear in French and I prefer --

**Senator Nolin:** I rely on my English colleagues to tell me, but in French it is squeaky.

(French follows -- Senator Nolin cont'g -- En français, cela...)

(après anglais)(Le sénateur Nolin)

En français, cela dit exactement ce que cela veut dire.

**Le sénateur Day :** Le commissaire peut changer « sa » décision, en français.

(Sen. Day : He can change his decision...)

(anglais suit)

(Following French -- Senator Day cont'g -- décision, en français.)

He can change his decision. In English, it does not say the commissioner can change his decision; it says the commissioner can change the commissioner's decision. That poses the question as to who the second commissioner is.

**Senator White:** Is there a second commissioner definition in the front? If there is not, there is only one commissioner. It is his decision he is referring to. It does not talk about the Commissioner of Correctional Service of Canada or someone else; he is talking about himself.

**Senator Day:** Now we are getting into a discussion of clause-by-clause and we should not have the witnesses here.

**The Chair:** I believe one of our witnesses, Ms. Lévesque, may have a comment.

**Ms. Lévesque:** I am not sure, but I wonder if the fact that we used the commissioner twice is to clarify that we are talking about the commissioner's decision and not the committee or conduct authority. I see there are other interveners, so maybe it is of assistance to say it is the commissioner's decision we are talking about and then the French can assist with its pronoun. It is a neutral gender and does not have his or her, not knowing whether the commissioner at the appropriate time would be a man or a woman. That might be another preoccupation where the drafters would have preferred not to change the existing language in the act.

**The Chair:** You are fine with that?

**Senator Day:** No.

**The Chair:** Okay, we can deal with it in clause by clause.

**Senator Patterson:** If I may raise another subject, the committee heard concerns about the Charter rights of Bill C-42, stripping Mounties of basic Charter rights to quote from one parliamentary brief and the tone of some witnesses before this committee.

I would like to ask the witnesses if they could respond to comments the committee has heard regarding the constitutionality of certain measures in Bill C-42, specifically self-incrimination and search warrants.

Are they constitutional in compliance with the Charter?

**Mr. O'Reilly:** I will start off with the search warrant. The wording is substantively very similar to that found under existing acts. It is based on wording from the Criminal Code. It requires that an information to obtain be presented to a justice. Only a justice, judge, provincial court justice, justice of the peace may authorize or issue a search warrant.

That in itself provides some protection.

It is not contrary to the Charter to have the authorization to seek or obtain a search warrant. Where the Charter test will come in is how that search warrant is applied and under what grounds it was obtained or applied for.

The other piece that was commented on was the *ex parte* aspect of the search warrant.

**Senator Patterson:** Yes, that was also mentioned. If you can address that, it would be great.

**Mr. O'Reilly:** The *ex parte* reality of a search warrant is that the intention of a search warrant as opposed to a production order is to enable a police officer or a person named in a warrant to actually obtain access to a building, place or receptacle in order to obtain a thing, document or something that would afford evidence and in this case, to demonstrate a contravention of the code of conduct.

*Ex parte* is necessary because if that was to be done in an open court setting or with notice to the person holding the item, you have to ask yourself how long that item will be held if it is evidence against them. That is why all search warrants are *ex parte* in this circumstance.

It is also important to recognize that the search authority here is very limited. It is only limited to being able to identify or obtain a thing to determine if there has been a contravention of the code of conduct. Information and evidence gathered under this search warrant is not readily available for the use in a statutory investigation. You could not use this search warrant to go and investigate a Criminal Code allegation or an allegation under the Narcotic Control Act, which it was called in my day.

The idea is that this is a tool that is available. It has all the protections of the Charter that is offered any search. It must be obtained through the granting of the authorization by a justice or a judge. It is not possible for someone to write or sign it themselves. It must be through application by an individual and then in turn, the justice or judge will determine under what conditions search warrant will be executed.

**Senator Mitchell:** There is another flip side to this. Let us say this is done in a way that is not consistent with a criminal case. Let us say this turns into something that should be a criminal case. Now you have obliterated the use of that evidence because it was done under a warrant that was not consistent with the criminal case. How would that work?

**Mr. O'Reilly:** In point of fact, that is something we deal with as police officers all the time. If in the execution of a warrant like this, which, like I said, is very specific, only for the code of conduct investigation, if we were to come across evidence -- for example, a marijuana grow operation in the

basement of a house or evidence lending itself to a Criminal Code charge -- the search would cease, you secure the scene and then you would obtain the proper search warrant. To continue under this, as you indicate, could potentially put further investigation into jeopardy.

**The Chair:** To clarify for the record, through that process, the investigating officer who decides a search warrant is warranted, do they not have to go to their superior to get consent before going to a justice of the peace or a judge?

**Mr. O'Rielly:** Thank you. I did miss that piece.

As noted in previous testimony, this authority exists in other police acts in Canada. What we saw built into this particular piece of proposed legislation is a requirement that before an investigator can even go before a justice to apply, they must first appear before or submit their intention or request to make that application to an officer designated by the commissioner. The intent of that is to ensure that these judicial orders do not lend themselves to be readily misused based on an individual investigator's interests or intentions.

**Senator Patterson:** The other part of my question was about the statements and self-incrimination, if I may ask that be addressed, Charter compliance for the requirement of making a statement. You know the section I mean.

**Mr. O'Rielly:** I apologize. Thank you, senator. I was going to ask for clarification because there are two different pieces here. I can speak to the investigation into contravention of the code of conduct under Part 4, but the authority of the Civilian Review and Complaints Commission --

**Senator Patterson:** No, it was the code of conduct that was raised by the witnesses that I wanted addressed, please.

**Mr. O'Rielly:** It would appear that I can help, I believe. At least I will attempt to.

The use of an ordered or required statement under the code of conduct has been, as noted before, with the RCMP certainly since the act of 1986. As also noted, this is an authority that is used sparingly. The reason for that is that subsection 40(3) speaks directly to the fact that you may be able to order a member to incriminate themselves, but you cannot use that information for anything against the member.

In effect, this is an investigative tool under very exigent circumstances where a response is immediately required for some reason, for example to obtain evidence that might otherwise be lost. Sorry, that is a bad example. More along the lines of determining, for example, if there is a piece of an investigation that is vital to pursuing a Criminal Code offence at that time, for information that may be lost or not otherwise available, an order can absolutely be made and the member can then be compelled. However, in a criminal setting, the Charter of Rights and arguably does not apply to the same extent as to an administrative proceeding; there are a series of cases where that is set out.

That information, no matter what it is, cannot be used against the member unless they purposely lied or committed perjury. That by itself is similar to section 13 of the Charter, which says



that even if you compel a statement -- there is nothing saying you cannot compel a statement. If you do compel a statement, the protection is that information cannot be used against you in this case in a civil, administrative, criminal or other proceeding.

**Senator Patterson:** Thank you.

**Senator Manning:** Several times today during testimony, we have heard witnesses make comments about the fact that decisions that rest with the commissioner, once a decision is made, there is no opportunity for them to challenge that decision, might be a good way to put it, that there is no accountability pretty well because there was no avenue to address the decision he was making. Once a decision is made, it is final.

I am just concerned about anybody having that much authority, that the buck would stop completely with that person, he or she, and that according to what we heard today, nowhere along the line would the commissioner be questioned or would there be some level of accountability.

Can someone enlighten us on any framework that is in place, a level of accountability or what type of regime exists? No one has unfettered decision-making power 100 per cent of the time, which can never be questioned. That kind of throws a blind side to me.

I am just asking whether there is something there -- as I said, a framework or accountability regime -- that would allow decisions that are made that would address the concerns that were raised here today in relation to the fact that there is no accountability within the higher level?

**Mr. O'Rielly:** In point of fact, the commissioner has a variety of different authorities. The purpose is to make sure it is crystal clear who has ultimate accountability for the administration of the force.

In the case of the authority to discharge, demote or recommend the demotion of a deputy commissioner for reasons other than for discipline or unsatisfactory performance, it is important to note that those decisions can only be made on cause; cause must be demonstrated.

It is also important to note the commissioner him or herself is not the person who is going to be making those decisions. A basic foundational piece of this bill is that the commissioner is able to delegate the authority to carry out the administration of the RCMP to the most appropriate level. What is envisioned, then, is we have people within, for example, the divisional structure who would be delegated the authority to make a decision or determination as to whether a member should be discharged or demoted, or in the case of the deputy commissioner, a recommendation for discharge be made.

If the member is dissatisfied with a decision, they have the ability to grieve that decision. The grievance itself goes first to the External Review Committee, and that committee has the opportunity to review the actual case. In some cases, if they decide it prudent, they may initiate a hearing into the case, after which they produce a report that includes recommendations to the commissioner. The commissioner is then provided with the file to make the final and binding

decision on the grievance. The commissioner has not seen the complaint up to this point. They see it now with all the material from the ERC, the External Review Commission, as well as the initial material that went into the decision. The commissioner makes the decision as to whether to uphold that decision. If the commissioner makes the determination to uphold it, then the member has the ability to seek further review by the Federal Court.

A new element we have here as well is that the Civilian Review and Complaints Commission is in a position where if there are a series of decisions made -- there is concern as we have seen, for example, with the sexual harassment concerns from different members. If that is brought up or brought to the public light or raised to the CRCC, then the chair has the ability to order a review into how we conduct our policies and how we apply procedures. That is an extra layer of accountability that did not previously exist, which I would ask Mr. Potter to expand on if necessary.

**Senator Manning:** Would you like to add something?

**Mr. Potter:** Yes. That is an important new power coming from a recommendation of Justice O'Connor. The policy review function is quite sweeping and allows the independent review body to look at any matter related to the RCMP Act and its administration by the RCMP. Based on that review, the minister then has certain tools at his disposal to intervene at a strategic level, should that be required, through, for example, a ministerial directive.

**Senator Manning:** In the beginning, the person who decides to demote or dismiss would be on a level lower than the commissioner. The decision would be made at that level. If that member wanted to grieve, the grievance will be decided eventually by the commissioner?

**Mr. O'Rielly:** Yes, senator, that is correct.

**Senator Dallaire:** The parameters for taking that action at the lower level by the either the Commissioner's Standing Orders or the rule 88 or whatever it was, do they exist and are they articulated in a legal document or reference? In National Defence, you would have the Queen's Regulations and Orders. Do you have an equivalent within the RCMP to guide the subordinate commanders with regard to the parameters of taking such actions?

**Mr. O'Rielly:** Yes, senator, that is absolutely the case. We do have a series of subordinate instruments that we can rely on. In addition to the RCMP Act, there are regulations as struck by the Governor-in-Council. Then there are Commissioner's Standing Orders. I cannot remember what the DAOD acronym stands for, but I think those are similar. Then we have policies, guidebooks and of course the training.

**Senator Dallaire:** It is just to ensure that when push comes to shove, there is the Judge Advocate General Branch and the Queen's Regulations and Orders that we adhere to, which permit subordinate commanders to take these decisions and to do it within the letter of the law of the act. Those are clear and they are laid out. An equivalent instrument exists within the RCMP. Is it the Commissioner's Standing Orders or some other legal document like that?

**Mr. O'Rielly:** Actually, the Commissioner's Standing Orders are a regulatory instrument.

**Senator Dallaire:** They are legal.

**Mr. O'Rielly:** Yes.

**Senator Dallaire:** We have this paramilitary thing again. You have rules in there that are very close to what National Defence has, a military structure. Then there are other rules that are trying to make like police, and the mixture of the two is creating significant trauma in the application, I believe, for the force as it modernizes to meet the challenges. This bill did not sort that out totally. You either become a police force or you become a military gendarmerie, and you stop being in the middle. That is why we will still see some problems in the future, because of that duality that is not a clean mix now within modern policing, I believe.

**Mr. O'Rielly:** I will add to that. One of the reasons everything is not laid out step by step in the act is that in 1986, when the existing RCMP Act was established, that is exactly what happened. Each step that had to be taken was laid out in the law. As a result, as the law changed and as best practices in human resource management came about, we were not in a position as an organization to take advantage of those and keep up with the changing times.

The reason that the amendments, as proposed under Bill C-42, appear to be sparse is that what is designed to be built in there is flexibility. As the law changes and as best practices change in the future, there would be the opportunity, for example, to go back and seek changes to regulation or to the Commissioner's Standing Orders. It will still take some time, but the flexibility would be built in.

**Senator Dallaire:** You do not have to go back to legislation to do it, then?

**Mr. O'Rielly:** Yes, that is the intent, senator.

**The Chair:** Just to clarify one more aspect in respect to the conduct boards, because I do not think it is on the record. It is important that a member who is being investigated, and possibly disciplined, is given every possible protection there can be, knowing that there must be a process.

Can you clarify for the record: If a member is notified that there is a possibility of discipline and a conduct board is set up, is it not a fact that he or she can challenge one, two, or all three of the people on the board and ask to have them replaced if he or she has reason to believe they are not going to get an impartial hearing?

**Mr. O'Rielly:** Yes, senator, that is exactly right. That is an existing aspect, and it was retained in this proposed legislation as well.

**The Chair:** I wanted to have that clarified for the record, because that is a solid protection built into the system.

Are there any other questions for the witnesses? Then I will ask the witnesses to be excused from the table, but please stay for the purpose of the clause-by-clause portion of the hearing, just in case we have further questions.

**Senator Dallaire:** I would like to present a statement at this juncture.

I would think it appropriate that in the future, as we look at legislation, recognizing that there are certain circumstances that put time pressures on us -- and that is a fact of our system of governance -- that in the future we would, with absolute rare exception, go into clause-by-clause after we have had witnesses on that same day.

Today demonstrated that there was a significant amount of information being passed around from one angle to another that could have warranted more query; however, we had already agreed to the sequence of events. I would like to just to lay it out that maybe as a standing operating procedure of our committee, that in the future we do not adopt a procedure that has clause-by-clause immediately following hearing from witnesses, unless it is so innocuous that is an obvious one. Could that be entertained, please?

**The Chair:** For the record, deputy chair, I just want to say that I totally agree with everything you have said. As you know, the schedule was agreed to by all members of the committee. Because of the situation with regard to time, et cetera, we felt we had to deal with the bill today. As a member of the steering committee -- and of which you are a member -- I will definitely take that into consideration. It will not be utilized unless it is absolutely essential that it be utilized.

**Senator Dallaire:** That is most appreciated.

**Senator Day:** Mr. Chair, I had raised that issue at the last meeting. I appreciate very much your comment and I will look forward to living by that consideration in the future.

**The Chair:** Thank you, Senator Day.

I would like to proceed to clause-by-clause.

Is it agreed that the committee proceed to clause-by-clause consideration of Bill C-42, An Act to amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts?

**Hon. Senators:** Agreed.

**The Chair:** Agreed.

Shall the title stand postponed?

**Hon. Senators:** Agreed.

**The Chair:** Agreed.

Shall the preamble stand postponed?

**Hon. Senators:** Agreed.

**The Chair:** Agreed.

Shall clause 1, which contains the short title, stand postponed?

**Hon. Senators:** Agreed.

**The Chair:** Agreed.

Shall clause 2 to 21 carry?

**Hon. Senators:** Agreed.

**The Chair:** Shall clause 22 carry?

**Senator Mitchell:** I have an amendment to clause 22.

I draw attention to members of the committee to the first of my three amendments on three separate pages. This one is to clause 22, page 17.

I move that Bill C-42 be amended in clause 22 on page 17,

(a) by replacing line 7 with the following:

22.1 (1) Subsections 32(1) and (2) of the Act are; and

(b) by adding the following after line 12:

(2) If a grievance has been referred to the Committee under section 33, the Commissioner shall act in accordance with any findings or recommendations set out in the report of the Committee or the Committee Chairman in respect of the grievance, including any recommendation as to the disposition of the grievance.

May I explain? The first amendment adds 31(2) to 31(1) because I propose to add another subsection. The subsection that I propose means that instead of a grievance going to the committee, which under the bill as it stands the commissioner could accept or reject, the commissioner will not have the option of rejecting the committee's recommendations. That gives greater strength to the intent of the bill, which is, in part, to give greater civilian oversight. Without this, the power of the CRCC is diminished significantly and the power rests with the commissioner, which leaves little recourse to someone who has gone through the process and feels they have not been treated fairly within that process.

**Senator White:** If I may, they still have an opportunity following the decision of the commissioner to go to judicial review.

**Senator Mitchell:** Yes, and that has been considered by witnesses in their testimony. However, the problem is that it is very expensive and there is limited opportunity to do that. It is cumbersome and not consistent with what occurs in other major police forces across the country, which emphasize civilian independent oversight outside the command structure of the police force. It can be seen to be biased internally.

**Senator White:** In the province of Ontario, the decision of the police services board, which operates in some ways like the chief or the commissioner in this case, would go to exactly the same place: a provincial judicial review. The only difference is that under the bill, the commissioner makes a decision that typically we would see from the chair of a board in Ontario; but it would end up in the exact same place -- judicial review.

**Senator Mitchell:** You have a distinct separate step in that case because the board is independent, and a decision could be appealed to the court. The way this bill is structured, you have one extra step as it comes back to the commissioner, who has delegated authority to fire, to review and, if that is appealed, to review the appeal.

**Senator White:** The external review committee provides evidence that a police service would never receive. The chief and the board would hope to receive that amount of information. I would suggest the decision made at that level would be greater not lesser because the commissioner has the external review.

**Senator Mitchell:** I wish you had been able to sit through some of the testimony today.

**Senator White:** I guess watching it on television was not as good.

**Senator Mitchell:** I stand behind this and appreciate the senator's comments, as misguided as they are.

**Senator Patterson:** The issue is the ultimate accountability of the commissioner. One purpose of the bill is to make the buck clearly stop with the commissioner; and this proposed amendment would seem to go against that. It is just a comment. Thank you.

**Senator Dallaire:** I am used to the Chief of Defence Staff being the last word, but I still believe that a civilian oversight requirement exists, and this amendment would make it easier. There may be value in the regulations that will come out of this in that the CRCC will have a much more deliberate insight into these decisions. If the commissioner does not agree, he must put his disagreement in writing, which goes to the CRCC, which potentially could go to the minister; but it seemed they were reluctant to do that exercise, which they should not be. That civilian oversight should be quite prepared to go to the minister any day of the week, and I hope the regulations might reflect that.

**Senator Manning:** If a grievance is brought forward to the commissioner, it is not just a yes or a no. He has to file a report and explain his decision, whether agreeing with the committee or

disagreeing. I would think that we might be binding the commissioner with this proposed amendment; and we do not want to do that.

**Senator Dallaire:** As long as the other body monitors this and keeps an eye on how he is doing. That civilian oversight body responds to the minister. The commissioner is the person at risk of being undermined, but not by the proposed amendment, which would have made it clear for him.

**Senator Manning:** His accountability is the RCMP structure.

**The Chair:** We will take a few minutes to see what happens, Senator Mitchell. It has been moved by Senator Mitchell that Bill C-42 be amended in clause 22, on page 17:

(a) by replacing line 7 with the following:

22.(1) Subsections 32(1) and (2) of the Act are; and

(b) by adding the following after line 12:

(2) If a grievance has been referred to the Committee under section 33, the Commissioner shall act in accordance with any findings or recommendations set out in the report of the Committee or the Committee Chairman in respect of the grievance, including any recommendation as to the disposition of the grievance.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Chair:** The nays have it. I declare the motion defeated.

**The Chair:** Shall clause 22 carry?

**Hon. Senators:** Agreed.

**The Chair:** Shall clause 23 to 28 carry?

**Hon. Senators:** Agreed.

**The Chair:** Shall clause 29 carry?

**Senator Mitchell:** I have an amendment. I move that Bill C-42 be amended in clause 29,

(a) on page 20, by preplacing line 41 with the following:

action or proceeding, provided that at all appropriate stages throughout the investigation the conduct authority shall give the member reasonable opportunity to be

present and to make representations to the conduct authority in person, in writing or through legal counsel or any other representative.

(2.1) Subject to subsection (2.2), the member shall comply with any requirement to answer a question as provided in subsection (2) within one week after being asked to do so.

(2.2) If satisfied that special circumstances exist, the conduct authority may extend the period referred to in subsection (2.1);

(b) on page 21, by deleting lines 37 to 40;

(c) on page 22, by deleting lines 1 to 3; and

(d) on pages 22 and 23, by renumbering subsections 40.2 (5) to (10) as subsections 40.2 (4) to (9) and any cross-references thereto accordingly.

Subclause (a) refers to the issue of self-incrimination. First, the member subject to the proceeding would have the right to call counsel and could not be forced to make a statement without exercising that right or waiving that right. Second, the member would have one week within which to do that. It is about that length of time in B.C. It is five days -- give them the weekend -- except when the conduct authority would determine that one week was not enough in his or her judgment and then it would be extended further. This really addresses procedural fairness, specifically. It would ensure that while this RCMP person would not be getting exactly the same level of rights protection as a Canadian citizen at large would, he or she would have greater protection than is provided for in this bill. I will ask the question: Why is it that they should not be given that kind of protection?

(b) and (c) refer to what I call tele-warranting; they are the same clause that is being deleted on two pages, so we have (b) and (c) for one page and the second page.

What it does is deletes the clause that allows for a warrant to search some property that belongs to an RCMP member, to delete the provision in the bill that that warrant could be done over the phone or perhaps, as it says, with some other telecommunication mechanism like an email. In the absence of that clause, that is, once it is deleted, you revert to the clause before it, which says you have to get a proper warrant like you would for any other search of any other Canadian -- again, procedural fairness is addressed with that.

It strikes me that it is not inordinately cumbersome, and again, why would RCMP members who are subject to allegations not have the rights of every other Canadian in a situation like this? No matter what is said about the limits, the fact is that it could destroy their career or end up in a proceeding that has quite dramatic effects on their life and career.

Finally, (d) simply renumbers everything after the committee accepts my amendments.



**Senator White:** I am trying to figure out why there is a concern about this. This is not new, the ordering of statements. In fact, *Willert v. the RCMP Commissioner*, who went to the Federal Court of Appeal, argued the same thing you are arguing here. This is not a criminal court; in fact, most would argue this is a labour issue, but it has to do with a discipline matter. In that case, the Federal Court actually did not give them the same level of protection that they would give the general public in self-incrimination or in gathering information and fact-finding, which is really why the ordered statements are needed. It is about fact-finding and the exigency sometimes that comes with the speed with which you must gather those facts.

I have to say I am challenged by why this is a concern. Most police agencies in Canada have the ability to order statements from police officers even at some points in self-incrimination because it is not a criminal proceeding.

**Senator Mitchell:** These have real civilian oversight and have unions as well, but that is not an argument for working there.

**Senator White:** That was an amendment and a great discussion.

**Senator Mitchell:** The most have argument, we can be choosy with that, I guess.

The fact is that regardless of what is said about this not being incriminating in a criminal case, it certainly could be incriminating in a civil case, for example, and certainly can be incriminating in an administrative case. If your career is on the line, then it is of tremendous consequence.

I do not see on the other hand why the urgency of investigation or finding facts or searches in this case would be any greater than the urgency of an investigation or allegation against a Canadian at large, a Canadian citizen outside the RCMP.

No matter how police people are treated across the country by their legislation, I think fundamental fairness would dictate that we should not treat RCMP citizens of Canada differently from non-RCMP citizens of Canada in something this important to procedural fairness.

**Senator Patterson:** I would like to congratulate Senator Mitchell on the work he has put into this. It is an issue that has been raised before the committee. I would say to him that having asked questions about this, I am satisfied that this is a very narrow focus. It is on conduct. These are the rules that RCMP members know about when they join the force.

It would be sparingly used in urgent circumstances and there is, I believe, a real concern about potential loss of evidence from the time delay that Senator Mitchell is suggesting.

With all respect, I am not persuaded.

**Senator Dallaire:** Here we go again into this exercise of, I believe, what the organization is.

What is in the bill now is what is used in the military, but it is used because of an operational requirement. It is not used because of a garrison need, run-of-the-mill. However, over the years it

has been abused in garrison and we have been into people's houses. We send our police in to do investigations, but it has always been a very nasty point when used in garrison. When used in the operations field there is no doubt -- people stealing from each other could put lives at risk -- but in the context of a garrison structure and a police structure that is in the city, I mean, it is established; I think this goes beyond an absolute requirement.

If I was evaluating it, is it essential, is it necessary, or is it nice to have, it might be necessary but it is certainly not essential. I think these amendments would be perceived very positively by the members. From my own personal experience, it is a contentious point even from the world I am coming from.

**Senator Nolin:** The example you used is of a criminal nature, even in the military.

Here it is not even that. I, too, would have liked to see the court decide that it should be, but they decided otherwise. That is why we are not talking criminal. The Charter is talking about a criminal investigation. Here we are not talking about that. That is why I tend to accept the argument of Senator White. The fact that there is no union, I totally agree, it will change. The day the rapport de force will be different, many things will change, but it is not for us to decide. The court will decide and we will see then.

**Senator Dallaire:** The problem is that even where I come from the practice can be abused for a variety of reasons under the command structure.

Commanding officers have an incredible amount of power that is used in garrison and sometimes quite erroneously, on occasion abused, and the individual has no recourse. That is the process, just like our summary trial system and so on. Although there has been a number of amendments and modernization, that has remained; it has been restricted but it still remains, and I do not see why it should be part of the police structure, to have to use an instrument that I think is over the top coercive and to which the individual has no recourse or comeback to protect himself or herself.

I think this amendment makes a hell of a lot of sense.

**The Chair:** Senator?

**Senator Nolin:** It is not a Charter right. It is definitely not, and that is why I understand the court decided.

**Senator White:** It is administrative.

**Senator Nolin:** I can understand the argument.

**Senator Dallaire:** Administrative rights are exactly what is creating more redress of grievances and problems than Carter has liver pills. That is because there is so much power in the hands of the chain of command. That is why I think this would be helpful in reducing some of those frictions that are out there.

**Senator White:** I am not convinced bringing more lawyers into the room would make it more clear. I think the opportunity for the commissioner to be accountable, responsible and to make these decisions is important. This is not a criminal court. I think this is about management and leadership, and we should let the commissioner do both.

**The Chair:** It has been moved by Senator Mitchell that Bill C-42 be amended in clause 29. The amendment has been read. Shall I dispense?

**Hon. Senators:** Dispense.

**The Chair:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**Senator Dallaire:** I would like to have a recorded vote.

**The Chair:** We will proceed with a recorded vote.

**Ms. Thérien:** The Honourable Senator Lang.

**Senator Lang:** Opposed.

**Ms. Thérien:** The Honourable Senator Campbell.

**Senator Campbell:** For.

**Ms. Thérien:** The Honourable Senator Dallaire.

**Senator Dallaire:** For.

**Ms. Thérien:** The Honourable Senator Day.

**Senator Day:** For.

**Ms. Thérien:** The Honourable Senator Manning.

**Senator Manning:** Against.

**Ms. Thérien:** The Honourable Senator Mitchell.

**Senator Mitchell:** For.

**Ms. Thérien:** The Honourable Senator Nolin.

(French follows – Senator Nolin – Contre)

(après anglais)

**Le sénateur Nolin :** Contre.

(Sen. Patterson: Opposed ...)

(anglais suit)

(following French -- Senator Nolin -- Contre.)

**Ms. Thérien:** The Honourable Senator Patterson.

**Senator Patterson:** Opposed

**Ms. Thérien:** The Honourable Senator White.

**Senator White:** Opposed.

**The Chair:** There are four yays and five nays. I declare the motion in amendment defeated.

Shall clause 29 carry?

**Some Hon. Senators:** Yes.

**The Chair:** Carried. Shall clause 30 carry?

**Some Hon. Senators:** Yes.

**The Chair:** Carried. Shall clause 31 carry?

**Senator Mitchell:** I have an amendment, my final amendment.

**The Chair:** You have been busy.

**Senator Mitchell:** Clause 31, page 33, is my final of the three pages.

I move:

That Bill C-42 be amended in clause 31, on page 33,

(a) by replacing line 3 with the following:

"sioner shall act in accordance with findings;" and

(b) by replacing lines 6 to 11 with the following:

"respect of the case, including any recommendation as to the disposition of the appeal."

This motion is designed to be consistent with my first motion, which has not passed. In any event, just for the sake of the record, I would like to say that it should have passed the first case and should be put in in this place. I will just test their resolve.

**The Chair:** Order.

**Senator Day:** On this particular section, I just want to point out that, although I will not be proposing an amendment, this is the section that has: "The Commissioner may rescind or amend the Commissioner's decision."

**The Chair:** Thank you.

**Senator Day:** I wanted you to know that.

**The Chair:** It has been moved by Senator Mitchell that Bill C-42 be amended in clause 31, on page 33. Shall I dispense?

**Hon. Senators:** Dispense.

**The Chair:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Chair:** Defeated.

Shall clause 31 carry?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Chair:** On division.

Shall clauses 32 to 34 carry?

**Hon. Senators:** Agreed.

**The Chair:** Shall clause 35 carry?

**Hon. Senators:** Agreed.

**The Chair:** Shall clause 36 to 41 carry?

**Hon. Senators:** Agreed.

**The Chair:** Shall clause 42 to 66 carry?

**Some Hon. Senators:** Agreed.

**The Chair:** Shall clauses 67 to 76 carry?

**Hon. Senators:** Agreed.

**The Chair:** Shall clauses 77 to 85 carry?

**Hon. Senators:** Agreed.

**New Speaker 1:** Shall clause 86 carry?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Chair:** Recorded vote?

**Senator Dallaire:** This is on clause 86, which if I may speak, is just not right.

I can understand that there is a concern about them moving away from the police envelope into the public service. However, in National Defence, all of the people are in the public service. If there is a public service loyal to a department, National Defence certainly has those civilians, and they have never wavered from the cause.

The way of going about this is just not right, and there are not enough regulations articulated. In fact, this whole bill has no regulations, which makes it so open to interpretation to which we have no recourse.

There has been a significant debate about whether bills should be including regulations or not. This one does not. People like Tommy Banks would be in accord with that, but I am far more at ease with a bill that has regulations because you know how they will implement it.

I simply articulate that, in the process of moving this civilian staff, I think that the methodology has not proven, in front of us, to be responsible to them and, necessarily, for the betterment of the public service in regard to how they will be accepting these people and integrating them into a process that it is so foreign to them historically and financially. I regretfully request, Chair, unless there is debate, of course, that we have a recorded vote.

(French follows -- Senator Nolin: Je suis le premier)

(après anglais)

**Le sénateur Nolin :** Je suis le premier à avoir soulevé ce problème, il y a longtemps. Je dois vous avouer que je reste aussi sur ma faim.

Ceci étant dit, lorsque le ministre Toews est venu témoigner, il a, selon moi, utilisé les mots dont je m'attendais d'un représentant du gouvernement, à l'effet que le Conseil du Trésor prendra toutes les mesures nécessaires pour assurer un traitement équitable à ces employés.

Est-ce que je veux que le projet de loi retourne à la Chambre des communes et risque de ne pas être adopté, compte tenu du temps qu'il nous reste d'ici la fin juin et d'une possible prorogation, ou est-ce que je prends la parole du ministre?

Malgré tous les défauts que j'ai entendus, je reste aussi sur ma faim. Cela dit, j'ai confiance que le gouvernement prendra les mesures appropriées pour s'assurer que ces quelque 4 000 employés civils recevront un traitement équitable, pour utiliser les mots du ministre. Il ne fait aucun doute qu'on va les surveiller, étape par étape. Dans l'intérêt du projet de loi, j'ai décidé d'accepter la parole du ministre et d'appuyer l'article 86 tel qu'il apparaît.

(Sen. Campbell: We heard from Superintendent O'Rielly...)

(anglais suit)

(Following French -- Senator Nolin --tel qu'il apparaît)

**Senator Campbell:** We heard from Superintendent O'Rielly that this has been studied we do not know how many times and that, in fact, out of, let us call it 3,800, 200 and change would actually go into the public service.

I do not have faith in either this government or any government to ensure that Treasury Board, which I have even less faith in, would actually work to do the right thing. Treasury Board is all about money, and this is all about money.

This is about 3,800 employees who are critical to the 19,000 uniformed members, and I would not put my life or my well-being in the hands of somebody who is untrained and who is in the public service. I do not think that they will keep an eye on it.

As I said before, we have 3,800 people who joined the RCMP, made a decision and took a look at what was going on, at the rule, what the pension was like and all the rest of it and have devoted their lives to that, and now, suddenly, the government comes along and says, "We are really sorry for all the time that you have put in. We will throw you under the bus." That is exactly what they are doing.

I have no difficulty with vesting. I have no difficulty at all with that. I have no difficulty with the government -- if I had faith in the government -- with them actually studying this and going back to the previous and actually saying, "You are right." There is a place for civilian members. For those that are not within that, there are arguments to be made, and they, of course, have the right of appeal.

This is just not right. This is just not how you treat people. This is not how you treat employees.

If we do this, it sends a message that we can throw anybody under the bus. It does not matter where they are, and it is just wrong. I will vote against this bill unless we do something on this here. Out of the whole bill, this is the thing that is most egregious.

**Senator White:** I had expected that this would be the most contentious issue of this bill. The category of employees has been looked at for well over a decade. In fact, the Categories of Employees project reported to me in 2003 with recommendations then of a form of grandfathering, and this would not be an issue today if that had been accepted. It was not accepted, however, neither by the government of the day nor probably by the commissioner of the day.

The reality is that the reason there are three categories of employees right now, and the reason there are so many civilian members, is because in the mid-1990s they were not hiring public servants. This gave them a way to hire the exact same employee in a different way. You have people doing the exact same job: one who was a public servant and one who was a civilian member. One is not better than the other. That is the problem you see in the RCMP today. There is an expectation that one is better than the other, and it is not true.

Honestly, as someone said a minute ago, out of respect for public servants in the military and the RCMP, this is important.

**Senator Day:** I accept my colleagues' comments here.

We have received, each of us, many tens and hundreds of letters on this particular matter, so it is clearly a matter of concern.

I think I owe it to go on the public record as acknowledging having received those letters. I have tried to get a clear understanding of section 86 and its relation to section 20.1. Section 86 is subject to section 20.1. I did not get a satisfactory answer here this evening when I asked that question. You can see where there appears to be a conflict between the two of these in terms of categories.

The quick solution to this is, if the government wanted this, and a recommendation would come from Treasury Board, but it is a government policy decision. The government policy decision on this would clearly be or should be that there be no retroactivity, that hires from here on would be in the category the government wishes to have, but not to try to cancel a contract that has been in existence with these 4,000 employees for a long period of time.

**Senator Nolin:** Last week, anticipating today's debate, I asked the library to inform me on how to solve that problem.

The only answer provided by Robin MacKay, the acting chief at the library of the legal affairs and national security section -- and I do not think we can solve that problem -- is to amend the Public Service Superannuation Act.

We do not have that act in front of us. The only solution is to amend that act, and that was amended by Bill C-45



That is why we must have faith. That is the only way we will do it; otherwise we will not solve any problems.

I have a copy of that.

**Senator Dallaire:** If the government agreed to an amendment coming out of the Senate, we know by procedure, ladies and gentlemen, that it simply goes back to the House of Commons and does not even have to go through the three readings. It is just voted on, and you are in power so you would get it.

This would not create an overriding delay if this section were not part of it and formed part of another submission. It does not stop the reform, it just helps the head of human resources to clean up some significant messes that they have in regard to managing three different processes and so on, and maybe some unfairness inside too.

It does not destroy, in any way, shape or form, the intent or content of the bill and what we want to do. It is cleaning up an administrative requirement by HR. If the government agreed with it, this bill, amended, could go back to the House of Commons and be approved in one reading.

Getting back to the actual specific point, my reason, and I do support my colleagues, is based on two things. The RCMP, like where I come from, has civilian staff that is incredibly loyal.

The attrition rate, as I have been informed, of civilian in the RCMP is low compared to many other places. Many of them have no interest in moving on to any of the processes that the public service has on giving experience and moving from one department to another. They stay there, as I have experienced at DND.

The RCMP recommending that they no more be part of this structure, and that we divest of their administrative procedures and opportunities to the public service and then simply work with that, to me, is an act of disloyalty to them. If you want to create attrition, bring in disloyalty.

The way this is going about it is not responsive to the incredible loyalty and commitment that these people have to the RCMP, and there must have been another way. It could have been introduced separately instead of being part of this thing. As the commissioner himself indicated, this is the cleanup, administrative hassles of trying to sort out the civilian personnel world.

We are worried here about a reform in the RCMP. The reform in the RCMP should not be held up by an administrative thing that has significant impact on the future of the RCMP. That is why I recommend that we extract this section from the bill and the government agree to it, go back to the house, prove it and then come back with a real plan.

My last comment is the Minister of Public Safety, Mr. Toews, is one minister and Treasury Board is a whole bunch. In the final act, no matter how much they fight and so on, Treasury Board will dominate the decision. If you listen to the Treasury Board representation here today, I saw clerical, clerical answers and not a sense of humanity in any of the solutions presented to us.

**Senator Nolin:** Which is normal: they do not decide, it is the minister who decides.

**Senator Campbell:** I refuse to vote for something that is fundamentally wrong. Just because it would take the amendment of another act to make it right does not make it right.

Think of these words: intercept monitors, forensic laboratory analysts, criminal analysts, computer techs, pilots, telecom operators. These are not public service positions; these are police positions that are crucial to the operations of police.

If you want to change them to public service, that is fine, I do not have any argument with that. That is up to them to decide what it would look like, but to do that you have to take into consideration those people who are already there. If you do not, what guarantee does the next person have that another government will not come along and stick it to them and throw them under a bus? I will not vote for this unless we can get rid of it.

**Senator Manning:** I am referring to Senator Dallaire's comments in relation to the Treasury Board discussion today. I was under the impression that they were providing options to the government. One of them could be grandfathering, whatever they may be, but it is not those people who make that decision. It will be the ministers, in this case, from what I understand, who will be making the decisions.

Again, referring to Senator Nolin's comments, there is no doubt there is a concern here, and I am sure our colleagues in the other place have heard those concerns too. I feel comfortable that they will be addressed. This is merely a permissible clause that does not require the government to act on it, but the situation is that, whatever Treasury Board brings forward, a decision will be made. I strongly believe that the discussions around this table have been heard loudly and clearly by the others who will be making the final decision. I have confidence in that process.

**Senator Mitchell:** I must say that when I was listening to the presentation by Treasury Board today I kept hearing what sounded like speaking notes, the message that they have been told to deliver. The message was that they are working on ensuring these changes are fair to the employees and fair to the government.

My understanding of that is this is a zero sum game, and it is all about money and benefits, ultimately. If somebody loses, somebody wins. It is not as though they can both come out ahead in this.

Perhaps my skepticism is misplaced and there is something that I am missing, but I am pretty sure the government is driving to save some money here. If my skepticism is misplaced, and if fairness is at the root of all this, why not step back and delete the clause for the time being? Allow the Treasury Board to work out with the employees whatever it is they will work out and then the proof will be in the pudding. It will be fair or it will not. If the government is convinced that this will be fair, why would they be worried about waiting until it is fair? We can then vote on an amendment to the bill to make it happen at that point or to the act to make it happen at that point.

**Senator Patterson:** If I may contribute to the debate, Mr. Chair, I think I am on record, was tonight and will say now that I have heard the compelling presentations of these very valuable present members of the RCMP. I was impressed with what Senator Campbell had to say about the dependence of members doing their work on these civilian members. Minister Toews, I believe, understood our concerns, and went as far as he could go without committing a cabinet colleague or cabinet to talking about doing this in a most equitable way. To me the answer is that clearly these employees, or at least most of them, should be grandfathered. It is only fair. This is about fairness.

I believe that our government is not going to throw people under the bus when it comes to police or our military. I believe that they respect law and order and the military and the RCMP and want to make progress here and improve morale. I think we are talking about making a leap of faith and I am willing to do so, especially if we append to our report strong observations on this very subject. I understand that we will have an opportunity to consider that.

With those comments, I pledge that as a member of the government side I will be vigilant on this. We clearly have some time because it is permissive. That was kind of indicated by the Treasury Board witness tonight, namely that it will not happen right away. I think it will become clarified soon enough. It is obviously a compelling issue. Senator Nolin has been eloquent in defence of this and is an influential person, so I am willing to take the leap of faith, but I will keep my eyes open as we move forward.

**Senator Dallaire:** I am not potentially saying last comment, but I think we have gone around the table. First, Treasury Board is made up of Treasury Board ministers. They take the decision, not cabinet. Treasury Board is the overarching authority to spend funds and to ensure funds are spent appropriately, so Treasury Board can be quite ruthless at times in application of the rules.

Where I am coming from, honourable senators, is the fact that these people although not wearing a uniform were the next best thing. I am sure that they are in agreement that there are reforms required in the RCMP, as we have seen some of these innovative ideas and look forward to seeing the leadership going through reeducation and retraining, as was raised here, to apply this reform. However, for them to go about it this way reminds me too much of my own background where we have destroyed units and taken uniforms off of people. This, to me, is affecting the morale and will have a significant impact on the morale of the civilian staff that may stay in the same job but their sense of loyalty to the institution will be affected. Ultimately, morale has an effect on the operational capability of the organization. You may see a significant attrition rate created by this. I think it is just not underhanded but some sort of way of saying it is not the right way to do it. I think it is sad that it is being presented in this manner.

**The Chair:** Colleagues, shall clause 86 carry?

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**Senator Lang:** A recorded vote.

**Ms. Thérien:** The Honourable Senator Lang

**Senator Lang:** Agreed.

**Ms. Thérien:** The Honourable Senator Campbell

**Senator Campbell:** Agreed – no, sorry, against.

(French follows – The Clerk: L'honorable sénateur Dallaire...)

(après anglais)

**La greffière :** L'honorable sénateur Dallaire.

**Le sénateur Dallaire :** Contre.

(La greffière : The honorable senator Day...)

(anglais suit)

(Following French)

**Ms. Thérien:** The Honourable Senator Day.

**Senator Day:** Contre.

**Ms. Thérien::** The Honourable Senator Manning.

**Senator Manning:** Agreed.

**Ms. Thérien:** The Honourable Senator Mitchell.

**Senator Mitchell:** Contre.

(French follows – The Clerk: L'honorable sénateur Nolin...)

(après anglais)

**La greffière :** L'honorable sénateur Nolin

**Le sénateur Nolin :** Pour.

(La greffière : The honorable senator Patterson...)

(Following French)

**Ms. Thérien:** The Honourable Senator Patterson.

**Senator Patterson:** Agreed.

**Ms. Thérien:** The Honourable Senator White.

**Senator White:** Agreed.

**Ms. Thérien:** We have five yeas and four nays.

**The Chair:** Carried.

Shall clause 87 carry?

**Hon. Senators:** Agreed.

**The Chair:** Carried.

Shall clause one, which contains the short title, carry?

**Hon. Senators:** Agreed.

**The Chair:** Carry.

Shall the preamble carry?

**Hon. Senators:** Agreed.

**The Chair:** Carried.

Shall the title carry?

**Hon. Senators:** Agreed.

**The Chair:** Carried.

Shall the bill carry?

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**The Chair:** Carried, on division.

Does the committee wish to append observations to the report?

**Hon. Senators:** Agreed.

**The Chair:** I would then ask that we go in camera.

(The committee continued in camera.)

(The committee resumed in public.)

**The Chair:** Honourable senators, we are now back in session and I would ask is it agreed that I report this bill with observations to the Senate?

**Hon. Senators:** Agreed.

**The Chair:** I would then therefore ask that we go back in camera.

(The committee continued in camera.)