

Members First

The official newsletter of The Mounted Police Members' Legal Fund

Summer 2000



Legal Fund Provided Vital Support to Nanaimo Officers

On April 19, 1996, at approximately 0200hrs, Cst Raj Sandhu and Cst Shawn Boudreau of the Nanaimo Detachment became involved in a series of events that would consume their lives and careers for the next three and a half years.

The ordeal began with a noise complaint about two persons power washing the streets in the downtown Nanaimo core. The officers spoke to one of the power washers, who was not happy with the complaint. A short time later, the officers were involved in a short pursuit where two persons known to the local police had evaded a vehicle stop. While the officers were searching the downtown area, they noticed another vehicle driving erratically. A vehicle stop was initiated – a stop that would become the subject of discussion in three different courts and reach as far east as Ontario.

Cst Sandhu interviewed the driver and began an impaired driving investigation. Meanwhile, Cst Boudreau searched the vehicle and located an altered stolen validation tag on the licence plate. There was no insurance documentation present. When Cst Boudreau went to speak to the unidentified suspect in the back of the police vehicle, the suspect grabbed him and tried to pull him into the back seat. Cst Sandhu rushed to the other side of the pc to try to free Cst Boudreau. When his attempts to free Cst Boudreau were unsuccessful, Cst Sandhu deployed pepper spray and achieved short-term results. The suspect, Dennis Burdick, was left in the back seat without handcuffs. The suspect then kicked out the back window and tried to escape. By this time, Cpl George Fielding had arrived and was trying to remove the suspect from the vehicle. Cpl Fielding's attempts to apply the carotid control failed, and Cst Sandhu ended the struggle with a single strike to the suspect's nose.

The power washer from the previous complaint observed some of the altercation from about 60-100 feet away. Based on what he observed, he attended the Nanaimo RCMP office the next day, accompanied by CHEK TV, to lay a public complaint. During the investigation, the witness was able to write his own statement without being questioned and, after the suspect was located, his statement was prepared by a lawyer. Cst Boudreau was contacted while on leave in Nova Scotia to supply a

statement at a Nova Scotia Detachment. He was not given the opportunity to contact legal counsel or refer to any notes. The investigator concluded that Cst Boudreau's decision not to supply a statement in Nova Scotia amounted to a refusal.



Cst Shawn Boudreau

Crown Counsel decided to lay charges against all the parties and hold two separate trials. Mr. Burdick's trial took place first and the trial judge made findings of credibility and fact, siding with the account of the officers. The accused was convicted of assaulting a police officer and mischief. During the trial, Crown made comments to the accused's credibility and that of the eyewitness, views that were accepted by the trial judge. But despite all these findings, Crown decided to bring the officers to trial on charges of assault, causing bodily harm. This time, the trial judge dismissed the findings of the trial judge in the Burdick case and made findings not based on any of the evidence presented. These errors would prove instrumental in the appeal.

The entire ordeal was nothing less than extremely stressful, creating havoc for Cst Boudreau and Cst Sandhu both at work and at home. Both officers

continued to work and perform their duties at a high standard, but another stress would soon develop.

The initial legal costs were covered, but the Solicitor General's office would not approve funding for the appeal, claiming it had held up its end of the legal obligations and the members were now on their own. Even with the RCMP recommendations, no financial assistance would be forthcoming, despite the fact that the case presented a number of important issues and the appeal was both wanted and justified.

With the emotional battle surging and the financial constraints looming, the appeal process was questionable. That's when Cst Boudreau met with S/Sgt Bruce Morrison, who was eager to assist the officers. S/Sgt Morrison was on the Executive of the Legal Fund and, together with his colleagues, was able to provide financial assistance to help alleviate the burden that had been weighing so hard on both men.

In November 1999, the appeal decision was passed by Mr. Justice Halfyard, Supreme Court. Mr. Justice Halfyard overturned the conviction and sentence and ordered a new trial. In his decision, Mr. Justice Halfyard was critical of the second trial judge's interpretation of the evidence and neglect for the previous judge's findings. He went on to comment on the Crown's apparent abuse of its prosecutorial discretion.

In December 1999, Crown Counsel stayed all charges against the officers.

Thanks to the Legal Fund, a successful appeal was made and a victory was won for the membership in Nanaimo and elsewhere. The fight to have the entire costs covered continues.

"I was a member of the Legal Fund before the ordeal and will continue to be a member." Cst Boudreau added. "There are issues both in the criminal and civil courts that need to be addressed. We are all benefiting from the work of the Legal Fund in one way or another, whether it be nationally in the fight for wages and benefits or on the local level in criminal trials or unjust civil proceedings. Just because it doesn't involve you doesn't mean it doesn't affect you!"

Defamation and Malicious Prosecution: Some Practical Information

Part of our job here at the Legal Fund is to provide information to our members with regard to legal issues that could affect them. With this in mind, here is an overview of the elements required to successfully bring civil actions in the areas of defamation and malicious prosecution.

Defamation

Defamation consists of any written, printed, or spoken words which tend to lower a person in the estimation of others or cause a person to be shunned or avoided or exposed to hatred, contempt, or ridicule. Defamation is often referred to as either libel (written, printed, or recorded communications) and slander (spoken communications or communications transmitted by sounds, looks, signs, or gestures). Under the law, however, both libel and slander fall under the broader umbrella of defamation.

It is obviously not possible to provide an exhaustive list of what is and what is not defamatory. The approach often taken by the courts in determining defamation will be to find defamation in words which tend to lower the plaintiff's reputation. In general, any communication will be considered defamatory if it imputes to the plaintiff guilt of any crime, fraud, dishonesty, immorality, vice, or dishonourable conduct, or which

states that the plaintiff has been accused of or is suspected of such conduct.

In terms of members of the RCMP, any words which impute a lack of fitness for that employment, or misconduct in this calling would be actionable. More significantly would be words which would in any way suggest that the member was guilty of any crime (as an example – assault) or any discreditable behaviour.

Malicious Prosecution

The cause of action of malicious prosecution involves procuring the arrest and imprisonment of a person by means of a judicial process which is instituted maliciously and without reasonable cause. No action will lie for improperly putting the law in motion unless it is alleged and proved that this is done maliciously, without reasonable cause, provided that there is also legal damage.

To succeed in an action for malicious prosecution the plaintiff must prove: that he or she was prosecuted by the defendant; that the prosecution was determined in his or

her favour; that the defendant instituted or carried on the proceedings maliciously; that there was no reasonable and probable cause for the proceedings; and that he or she suffered damages.

Malice is a state of mind and the absence of reasonable and probable cause is some evidence from which malice can be inferred. However, absence of malice is a complete answer to an action for malicious prosecution, even where want of reasonable and probable cause is proved. A defendant who acts honestly, without malice and under a mistaken impression of the facts or the law, would not be liable.

Reasonable and probable cause means a genuine belief based on reasonable grounds the proceedings are justified. Lack of reasonable and probable cause is always a necessary element in actions for malicious prosecutions. The converse is also true. Lack of reasonable and probable cause for laying a criminal charge is not sufficient grounds to support an action for malicious prosecution as the plaintiff is also required to show that the defendant was motivated by malice.

Summa Strategies

For almost three years now, Summa Strategies Canada Inc. has been an active partner of the Mounted Police Members' Legal Fund, helping the Legal Fund to better understand the workings of government and to develop long-term relationships with important political decision-makers.

Members of the Legal Fund receive regular briefings from Summa concerning relevant developments at the political and bureaucratic levels. We are given solid, practical advice on the most appropriate responses to make to government, including strategic participation in the legislative process.

What has this meant for members? Now, more than ever, the Legal Fund and the DSRR Program have become an important and relevant part of the policy-making process as it affects members. With the help of Summa, the Legal Fund has become a more effective advocate for members at the federal government level.

The results of our collaboration with Summa is most evident in the assistance provided to members of the DSRR Program's Pay Council in their efforts to secure, for all members, the recent compensation package.

Located in Ottawa, Summa also has a network of associates and affiliated firms across Canada – such as Hawk Communications in Moncton, New Brunswick – as well as in key international business centres.

Frequently Asked Questions

Q/ What is the Mounted Police Members' Legal Fund?

A/ The Mounted Police Members' Legal Fund is a non-profit corporation through which funding may be provided for:

- (i) actions to bring a resolution of issues between members of the Legal Fund and the Government of Canada;
- (ii) actions taken collectively or individually with respect to matters which affect the dignity or welfare of a member or members of the Legal Fund which are not funded under benefit programs, including any Treasury Board policies and directives or any RCMP policies and directives, in effect by the RCMP or the Government of Canada for the benefit of members of the RCMP; and
- (iii) researching, investigating, exploring, analyzing, examining, collecting of information or data, and hiring outside counsel or organizations to do any of the foregoing in respect of issues described in (i) or (ii) above.

The monies in the Legal Fund come from payroll deductions from the members. The Legal Fund is administered by a Board of Directors. A five-person Executive Committee manages the daily affairs of the Legal Fund. The Executive Committee is assisted by a secretary-treasurer, the only paid employee of the Legal Fund.

Q/ How many members are there currently in the Legal Fund?

A/ There are currently 8481 members in the Legal Fund, force-wide. This constitutes a total of more than 51% of the entire Force.

Q/ Who can become a member of the Legal Fund?

A/ Membership in the Legal Fund shall be limited to members of the RCMP who:

- (i) are eligible to vote for the election of representatives;
- (ii) are interested in furthering the objectives of the Legal Fund;

- (iii) have received approval of the Board of their application for admission as a member; and
- (iv) have paid their annual fees to the Legal Fund.

Q/ What is the benefit of becoming a member of the Legal Fund?

A/ As members of a diverse, internationally recognized organization, there are many issues that concern us. It was imperative to establish a way to aggressively pursue those issues. The protection of a National Legal Fund, solely supported by the membership of the RCMP, is fulfilling that need.

Q/ What is the cost?

A/ Two dollars (\$2) biweekly (\$52 per year) by pay deduction.

Q/ Do I have to be a member of the Legal Fund to request assistance from the Legal Fund?

A/ Yes.

Q/ If I am successful in resolving my complaint, what are my obligations to the Legal Fund? If I am unsuccessful, what are my obligations to the Legal Fund?

A/ Should circumstances permit (i.e. if you receive a settlement of funds), repayment of funds advanced by the Legal Fund.

Q/ Is the Legal Fund independent from the RCMP?

A/ Yes. It is a registered non-profit organization and will be audited by an independent firm with the results being provided to members of the Legal Fund upon request.

Q/ Where can I get more information about the Legal Fund?

A/ By writing to the Legal Fund at: Mounted Police Members' Legal Fund, P.O. Box 8291, Stn. "T", Ottawa, Ontario, K1G 3H7 or by calling (613) 834-1681 or faxing (613) 834-2811.

Update: The Pension Surplus Challenge

Ever since the federal government decided to lay claim to the 30-plus billion dollars in pension surplus, directors of the Mounted Police Members' Legal Fund have been trying to find ways of legitimately challenging the issue. In doing so, the Legal Fund sought the advice of our professional strategists at Summa Strategies Canada Inc., as well as from independent counsel who is experienced in such matters. Additionally, the Legal Fund sought the opinion of both the chairman of the RCMP Pay Council as well as the DSRR Caucus Compensation expert who sits on the Council. The team was unanimous in its views that a challenge of this nature would not be viable for various reasons.

First and foremost, when the issue was researched, the RCMP was in the middle of negotiations on the pay package with the Treasury Board, and was fearful that a Federal Court challenge, at this crucial time, could affect the outcome of this package.

Professional advisor Mr. Graham Leslie, who sits on the Pay Council, summed it up by stating: "If my understanding is correct with regard to the statute of limitations, I am of the firm opinion that the interests of the members would be best served by biding their time, at least until the issue of pay and benefits has been resolved to our satisfaction. My considerable experience in dealing with politicians tells me that the goal of the average of the top three will be much easier to attain if those politicians have not been distracted or, even worse, offended by the

knowledge that RCMP members have filed suit against them. The entire case that has been so painstakingly constructed by the Pay Council, rests on reason and appeal to the politicians' sense of fairness. Our present view is that our case is being viewed with favour, and I believe it behooves us all to avoid any action that might jeopardize our efforts."

this for political reasons as he wanted his association to be seen as the only one that truly represents RCMP members. In actual fact, nothing could be further from the truth.

The legal opinion obtained outlines that there is virtually no likelihood of success should the surplus issue be challenged in Federal Court. Additionally, the advice we

The Pay Council is now through, and the directors of the Legal Fund must now carefully study the viability of challenging the pension surplus issue.

The Pay Council is now through, and the directors of the Legal Fund must now carefully study the viability of challenging the pension surplus issue. Contrary to what is reported in the Canadian Police Association Express (spring 2000 issue) by Mr. Mike Niebudek, the directors have not made this decision yet. Mr. Niebudek reports that the Division Staff Relations Representatives have decided not to pursue the matter and this in turn proves "without a shadow of a doubt how important it is for members of the Force to belong to an independent association." Mr. Niebudek is not a member of the Legal Fund and perhaps should have withheld comment rather than misinform the readers. Perhaps Mr. Niebudek reported on

have received from our professional strategists indicates that the government is not willing to negotiate any deal in relation to the surplus issue as they are confident that the various challenges will fail. The various factors must be carefully weighed by the directors before any decision involving the expenditure of a significant portion of your hard-earned contributions to the Legal Fund is made.

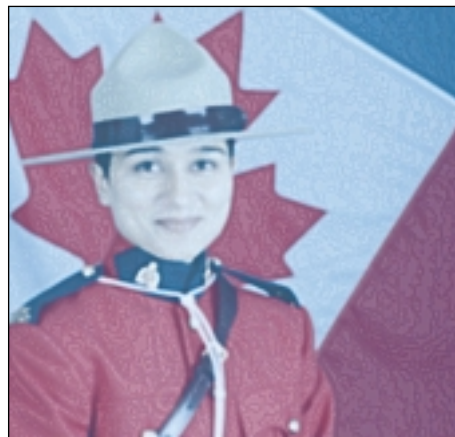
This is not to say that the Legal Fund won't challenge the issue, as circumstances change. We do have approximately five and a half years before our limitation of action has expired, and therefore feel that it would be irresponsible to pursue this simply for political reasons.

Cadet Allowances: Should They Be Taxed?

Are RCMP cadets employees? And if they're not, should they still be made to pay tax on their allowances? Those are the questions at the heart of a current court challenge backed by the Legal Fund.

Param Dhillon is a General Duty Constable with the Fisher Branch Detachment in Manitoba. She graduated from Depot in 1998. Cst Dhillon will be heading to Tax Court soon to challenge the taxation of cadet allowances.

At present, it is not clear whether RCMP cadets are employees at law, and this legal confusion is the crux of the case. If Cst Dhillon is found to have been an employee during her time as a cadet, it is unlikely that she and her fellow cadets will be able to deduct their expenses (room, board, and meals) since the expenses do not appear to fall within the deductions specifically set out for employees under the law.



Cst Param Dhillon

However, if the cadets are not considered employees of the RCMP during training, Cst Dhillon's lawyer will argue that cadets are either:

- not employees and their allowances are therefore not taxable; or
- not employees and while their allowances are taxable, they are entitled to net their expenses in calculating their income for tax purposes.

One of the better arguments that cadets are not employees is that, for the most part, the RCMP appears to be providing services to the cadets (by way of training) as opposed to the cadets providing any useful services to the RCMP.

If this challenge is successful, it would have a positive impact on members for the taxation years 1995, 1996, 1997, 1998, and henceforth.

Do you have any questions or comments about the Members' First newsletter? Would you like to contribute an article or a story idea for a future edition? Let us know by writing to us. Our address is: Mounted Police Members' Legal Fund, P.O. Box 8291, Stn. "T", Ottawa, Ontario, K1G 3H7. Or you can call us at (613) 834-1681 or fax us at (613) 834-2811.



THE MOUNTED POLICE MEMBERS' LEGAL FUND
FONDS DE RECOURS JURIDIQUE DES MEMBRES DE LA GENDARMERIE



A Brief Guide to Wills and Estates

A Will is a legally enforceable declaration setting out a person's intentions that are to be carried out after his or her death. The major sources of law relating to Wills and estates are statutes passed by the Provincial Legislature and by Parliament, and the reported decisions of individual court cases. The bulk of statute law that would apply to Wills is provincial. In addition, certain federal statutes may have to be consulted, the most important being the *Income Tax Act*.

Why do I need a Will?

There are many reasons why a person should have a Will drawn up. A Will ensures your property and possessions are passed on as you wish. It provides effective personal control over your estate. A Will ensures your estate is settled more quickly and inexpensively than if you die without a Will (intestate). The small cost of a lawyer to prepare a Will can save much inconvenience and expense to the family and other beneficiaries of the estate.

What is probate?

Before your executors can settle your estate, your Will may have to be probated. Probate is the process of declaring a Will valid and that the named executor(s) have the legal authority to act on behalf of your estate. The provincial court verifies the Will by issuing letters probate. The probate fees paid to the court are based on the value of the assets that flow through the Will. These fees vary from province to province.

Application for membership to the Mounted Police Members' Legal Fund

The Mounted Police Members' Legal Fund is administered by the National DSRR Caucus.

The National Legal Fund

As members of a diverse, internationally recognized organization, there are many issues that concern us. It is imperative we establish a way to aggressively pursue these issues. The protection of a National LEGAL FUND, solely supported by the membership of the RCMP, will fulfil that need.

The Divisional Legal Fund

Through monthly donations, we will have a strong, meaningful fund in each Division, administered by your Division representatives and committee of sub-representatives, with the ability to challenge many of the problems facing us in the performance of our duties.

Acting in Good Faith? On Duty? Off Duty?

The LEGAL FUND can offer protection for members who believe they have acted in good faith carrying out a duty and subsequently face an unfavourable interpretation by the decision authority.

THIS IS NECESSARY LEGAL INSURANCE

MEMBER – Complete and mail to your Division Staff Relations Representative (DSRR).

Name (Print) _____

Detachment, section, unit, squad, etc. _____

Division _____

Regimental # _____

Collator code _____

I hereby authorize a payroll deduction from my pay in the amount of \$2 biweekly and authorize transfer of those funds to the Mounted Police Members' Legal Fund.

Signature _____

Date _____

The small cost of a lawyer to prepare a Will can save much inconvenience and expense to the family and other beneficiaries of the estate.

There are a number of strategies to consider to minimize probate fees and enhance the value of your estate. The following are just two ideas you may wish to consider: registering property such as the family home jointly is one way to minimize these fees; however, registering assets jointly with someone other than your spouse may have immediate tax consequences when transferring part ownership to another person; secondly, by naming beneficiaries on certain assets such as life insurance, annuities, RRSPs, and pension plans, you can avoid probate fees. If everything a person owns is dealt with through joint ownership and beneficiaries have been named on all individual documents (RRSPs, life insurance), probating a Will may not be necessary.

It is also important to know that a Will must be probated in the province where you live. If the majority of your assets are located in another province, a different procedure must take place.

While there are numerous strategies to consider for your estate plan, some may be more appropriate than others for your personal situation. It is recommended that you seek independent advice from tax and legal consultants in the appropriate arrangements of your affairs.

What We're Working On...

Here are some of the important issues the Legal Fund will be pursuing in the weeks and months to come:

- Monitoring national public policy developments concerning criminal justice;
- Health and safety of members;
- Tax deductibility of DSRR Program fees;
- Revenue generation for the Legal Fund.