

Members First

The official newsletter of The Mounted Police Members' Legal Fund

Fall 2011



It is crucial to remember that all lessons learned and all benefits derived from actions supported by the Mounted Police Members' Legal Fund (MPMLF) accrue to all regular and civilian members of the Royal Canadian Mounted Police regardless of whether you are a member of the MPMLF or not. Examples of this can be found in practically all the Newsletters copies which are available on our Web Site at www.mplegalfund.com. For these reasons alone it is important for you to show your support.

Are you a member of the MPMLF? If not, you should be! See some of the other reasons in this Newsletter.

To become a member, please submit an application form, a fax or an email to your Staff Relations Representative (SRR) or Sub-Representative with your regimental number, name, current posting and your permission to deduct the biweekly payment from your regular pay. For additional information don't forget to check our web site at www.mplegalfund.com.

Expenditure Restraint Act - Federal Court Deems Unconstitutional - Significant Decision for Royal Canadian Mounted Police Members

In December 2008, Treasury Board decided to roll back wage increases across the Federal Civil Service with Regular and Civilian Members subject to the same roll back. Parliament subsequently enacted the Expenditure Restraint Act codifying the wage roll back.

An application for judicial review was made by SRRP members through the Mounted Police Members' Legal Fund because TB did not meet/consult with or have any discussions with the * Pay Council in relation to the roll backs of already agreed to wage increases.

*Mandate of Pay Council

1. To make recommendations concerning the

working conditions of regular members from the rank of special constable up to and including the rank of superintendent, as well as non-Special Services civilian members of the RCMP. The working conditions within the Pay Council mandate include:

- pay and annual salary ranges
- various leave provisions
- shift differential
- Senior Constable Allowance
- housing and transportation subsidies
- pensions statutory holidays
- public service health care plan
- life insurance
- annual hours of work

The court challenge rested on the following:

- the decision of TB was based on an error of law: contract principles;
- the decision was unreasonable: failure to consider relevant factors;
- the decision was unconstitutional: section 2(d) of the Charter (Section 2(d) of the Charter protects "freedom of association). This means that employees have the right to unite, present demands, and engage in discussions to achieve workplace-related goals, and also that employers have a corresponding obligation to meet and discuss.

continued on page 2

Information

The MPMLF is a private not for profit corporation under the direction of the majority of the Royal Canadian Mounted Police (RCMP) Staff Relations Representatives (SRRs). The views expressed in any material published in this Newsletter are those of the authors and do not reflect those of the RCMP.

Suggestions and contributions from members of the MPMLF are welcomed and encouraged. Please direct your comments to your SRR.

MPMLF National Executive Committee:

Sgt. Paul Joyal –

“D” Division – Chairperson

S/Sgt. Brian Mayrs –

“F” Division – Vice Chairperson

S/Sgt. Richard Marsh –

“E” Division – Member

S/Sgt. Tim Gilbert –

“K” Division – Member

One Member position vacant until next Annual General Meeting

MPMLF Staff:

A. Gordon Clarke, Secretary/Treasurer,
agclarke@istar.ca

Roy Hill, Assistant Secretary/Treasurer,
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When we take on an issue, we are convinced it is in the best interests of the membership and that justice will triumph.

•

We are not afraid of the cost, hiring the best lawyers available to work in your interest.

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We cannot however predict how the court will rule.

Expenditure Restraint Act

continued from page 1

Treasury Board's decision interfered with the process of bargaining (through the Pay Council):

First, Treasury Board did not bargain or even consult or discuss the decision before it happened;

Second, the interference involved an important matter: pay;

Third, the manner in which Treasury Board enacted this measure did not demonstrate any respect for its obligation to consult or negotiate in good faith (by, at the very least, informing the Pay Council of this pending decision and allowing the opportunity for the Pay Council to meet and consult on this issue).

On June 21, 2011, The Federal Court issued its decision and agreed that the Expenditure Restraint Act (and the 2008 Treasury Board decision) were unconstitutional.

On July 4, 2011 Department of Justice (DOJ) applied to the Federal Court making a motion for reconsideration of the Order of the Honourable Madam Justice Heneghan of June 21, 2011.

On July 19, 2011, Madam Justice Heneghan ruled that there were no grounds in the Application warranting reconsideration.

The Crown however has appealed the decision and has made a motion as follows: 1. “An Order staying, until such time as this Court renders final judgment on appeal, the Order of the Honourable Madam Justice Heneghan dated June 21, 2011 declaring the Treasury Board decision of December 11, 2008 to be contrary to section 2(D) of The Canadian Charter or rights and Freedoms and quashing it; 2. If the judgement of Justice Heneghan constitutes, in respect of sections 16, 35, 38, 43, 46 and 49 of the Expenditure Restraint Act, a finding of constitutional invalidity or a constitutional exemption, an Order staying of the effect of the judgment until such time as this Court renders final judgment on the appeal; and, 3. Such further and other relief as counsel may request and this Honourable Court may permit.”

Our counsel is responding to the stated grounds of the DOJ.

IN SIMPLE LANGUAGE, WE WON...

INTERESTING FACT!

At the writing of this Newsletter there were 17,008 members of the Mounted Police Members' Legal Fund. Last year at this time there were 17,005. This is remarkable in view of the fact that recruiting has been so drastically reduced that members of the Legal Fund who have left the Force over the past year outnumber their replacements by a considerable margin. We find many new Civilian Members and older Regular Members, who had not previously been a member of the Fund, have now decided to join.

A Letter From a Concerned Member

I joined the Force from University some years ago and after training was transferred to a small Detachment. My ambition was at that time to become Commissioner of the Royal Canadian Mounted Police (RCMP). I thought my dream was shattered when I almost immediately found myself in some difficulty and not knowing anyone beyond the other members at the Detachment inquired as to whom I could turn to for assistance. I was advised to contact the Division Staff Relations Representative (DSRR), as the other members said, "They are for everything." I did, and within a couple of weeks, because of the DSRR intervention, my problem was handled without any discipline. As time went on I eventually made it to Cpl. and I remember what the Section NCO said to me as I assumed my first command. "You are a manager now, make the best of it by showing interest, compassion and common sense in all of your dealings." I must have done okay in displaying my managerial skills as I worked my way through the Sgt. and S/Sgt. ranks and eventually earned my Commission. As a Sgt. I did have an issue where an employee felt they were being harassed by my comments on their performance report. Remembering the action I took when I was a Constable, I contacted my SRR and he told me that the other member had already contacted him however he felt that if the three of us sat down and discussed the problem we might be able to come up with a solution. We did as he suggested and the matter was subsequently solved without reams and reams of paper and the usual he said, she said, etc.

Through all of these ranks, from Cpl. upwards I have considered myself a manager, but recently I have been told otherwise by a member who for some reason is disenchanted with the SRR Program and feels a Union Association would be a better option for the members of the Force. I have been a member of the Mounted Police Members' Legal Fund since its inception. I know it was started by, and its Directors, are serving SRR members from across Canada. I have had no cause to avail myself of its services but I have read its Newsletters and have been heartened by the assistance its members have received and have had cause to think back to what the SRRs did for me years ago before the formation of the Legal Fund without the funding assistance of my colleagues. I asked the Association member what he would do for me that I was not already receiving through the SRR Program. He said nothing, you are management, we are labour.

What has changed? I am the same person I was before I joined the Force. The only thing now is that I know more about the RCMP. I was told I was a manager when I was a Cpl, Sgt and S/Sgt. What line did I cross that now I am not that same person and committed to the same things that I was when I was in those other ranks? Is the formation of a Union Association going to put me at odds with my fellow members who are still in the Constable, Cpl, Sgt, and S/Sgt ranks? No thank you. I am glad he told me I could not be part of his group. I do not care what rank you are, we are all members of this great organization, the RCMP. No matter what rank we are, we are all looking to do what is best for the Force and its members. The SRR Program has served in that role making tremendous strides over the years, not winning all of the issues, but making sure we always come out on top without creating a barrier between what the Union Association calls management and labour. We don't need barriers, we need people who will sit down together side by side and discuss the issues like concerned colleagues, as currently occurs, not yell at each other over a table. We have been, and hopefully will, continue to be a family. Lets not have a family breakup.

Dear Editor. If you wish to print my name it will be okay. I have never shied from the heat. I will leave that decision up to you.

Could This Happen To You?

Case 1.

Member transferred to a location where housing was provided. Member gives up his current position, wife quits her job and they sell their home. Upon arrival at the new location member finds that the home is not suitable for habitation it is unsafe and has been turned down as substandard by other prospective tenants. He brings the matter to the attention of his superiors and he receives notification that his concerns about safety and living conditions are or will be addressed. The next thing he knows he is transferred back to his previous Division. His former position has now been filled, his wife has no job and they have no home. And, as a result of the actions, the member estimated he was out of pocket in excess of \$100,000.

Processes available to the member within the RCMP and government failed to provide any relief from the situation. Fortunately the member had the foresight to join the Mounted Police Members' Legal Fund a few years previous so he contacted his SRR to ascertain what might be available through the Fund. Following his application, which was approved by his Division Board, a Legal Opinion was received which stated as the bottom line, "For the reasons noted, it is our view that the issues raised in this member's grievances are relevant to all members of the RCMP.....Because this case would establish an important precedent for all members of the RCMP, the Board may wish to approve the members request for legal funding." The Board approved the members request. This was in April 2007.

Over the intervening years there have been numerous discussions between the respective lawyers, the member and witnesses concerning this issue. And while a financial settlement had at one time been offered, it in no way met the expectations of the member and a costly trial, scheduled to last for 9 days which called for a number of witnesses from various locations to appear, was finally set for May 2011. Negotiations for a financial settlement however continued, the trial was postponed and a settlement suitable to the member and the Legal Fund was reached in August 2011.

Should the applicant not been a member of the Legal Fund or if he had chosen to face this issue without the assistance of the Legal Fund and lost his fight for justice, he would have been out a further \$50,000. We were there to help and all of us are the better for it.

Case 2.

A member relocated from one Division to an isolated post in another Division several years ago. Upon arrival at the new post member and dependents spent several nights in commercial accommodation prior to moving into Force housing. Upon occupying the residence member found that member and family were expected to live in accommodations that lacked basic furnishings and essentials. There was no TV/radio, no linens, nor any small appliances. Member had to to get what she/he could get elsewhere including other vacant Crown owned homes. Member was of the understanding that she/he was not eligible for interim meals and incidentals.

Member relocated to the new location with the understanding that only 90 kg of extra baggage was permitted for a family of four for three weeks. Included in the 90 kg would be toys, books, work kit, car seats, cutlery and a dog with a kennel. With a limit of 90 kg, it was impossible to take items to set up residence while awaiting household effects.

Member submitted a claim for compensation and was denied payment. The Departmental National Coordinator's office and the Policy Centre advised to deny same. Member filed a grievance and the grievance was upheld in 2010. The Respondent was ordered to compensate the member several thousand dollars.

Several months after the adjudication the member was still awaiting payment. The Policy Centre refused to implement the redress as ordered by the Adjudicator. The whole grievance process was brought into disrepute.

The member sought assistance from the LF for legal advice. The advice provided was to make application to the Federal Court for an Order of Mandamus compelling the Force to implement the Level I decision. All necessary work was done to file in Federal Court. Senior Management of the Force were advised of this pending action, resulting in an agreement to reimburse the member.

INTERESTING FACT!

Since last year's Newsletter, MPMLF membership has increased in all Divisions except "E", "N", "S" and "T". 74% of all Regular and Civilian Members are members of the Mounted Police Members' Legal Fund.

What's Happening!

This year has been no different than previous years with a full calendar load for the Directors of the Mounted Police Members' Legal Fund. We currently have 62 open files (Last year at this time we had 55) and a case of defamation in "H" Division, which was taken on in 1999, is still on the books. In 2010 we took on 32 new issues. To date in 2011 (1 September) we have taken on 20.

"B" Division - 2 1 Civil Issue 1 Assault	"D" Division - 4 1 Harassment 1 Malicious prosecution 1 Defamation 1 Inconsistent Application of Promotion Policy	"E" Division - 17 3 Harassment 1 Defamation 3 SWOP 1 Assault & Battery 1 Refusal to Investigate 1 Civil Action 1 Violation of Privacy 1 Abuse of Process 1 Spl I - SPS - ETEC 06 Positions 1 Responsibility to Report 1 Human Rights 1 Relocation Benefits 1 Promotion Application Process
"F" Division - 3 1 Assault/Defamation 1 Defamation 1 Wrongful death	"H" Division - 3 1 Defamation 1 Medical Profile 1 Promotion Process	"J" Division - 6 1 Transfer 1 Harassment 1 Duty to accommodate 1 Defamation 1 Grievance System 1 Language Profile
"K" Division - 9 2 Defamation 1 Grounds for Discharge Accommodate 1 Removal from Position 1 Harassment 1 Judicial Review VAC 1 Transfer Issue 1 Harassment/Threats 1 Assault Civil Action	"O" Division - 1 1 Harassment/defamation	"L" Division - 1 1 Release of Unsubstantiated Data Re: The McNeil disclosure precedent
"HQ" Division - 5 1 Civil Suit 2 CM Study Issues 1 Harassment 1 Shared Services	National Issues - 9 On Call Pay ("H";"J";"K") ERT Pay raise roll-back Intervention Travel directive/accommodation Labour relations Legal Fund bylaws RCMP Modernization Act Long Term ODS Leave Payment of GST/HST on Legal Fund Deductions	

Over the years we have financed dozens of issues for members of the legal fund and received dozens of legal opinions from lawyers and law firms from one coast to the other concerning those issues. following are only a few of the issues on which legal opinions were recently received

(The results of these Legal Opinions contain solicitor/client privileged information and is the property of the Mounted Police Members' Legal Fund. Any disclosure or other use of the information contained therein may be unlawful and is strictly prohibited).

1. Application to consider the merits of any potential civil action based on admission by the RCMP Adjudication Board that they improperly disclosed a member's personal information.
2. Does the Federal Court of Canada have jurisdiction to review a decision made by an RFI Adjudicator pursuant to CSO - Dispute Resolution Process for Promotions and Job Requirements)?

If so, what standard of review will be applied by the Court?

Is it likely that a member's application to the Federal Court for judicial review will succeed?
3. What recourse is available to members who were not afforded a "cost" relocation in accordance with the terms of the RCMP Integrated Relocation Program?
4. Does the one-year limitation period under section 43(8) of the Royal Canadian Mounted Police Act prohibit the RCMP from commencing the Investigation on a Code of Conduct issue.
5. Member injured during a training exercise. Member applied for a disability pension and was turned down. Is a claim against the RCMP barred by statute? If so, what other recourse is available to the member?
6. The opinion dealt with a number of concerns with respect to Grievance procedures:
 - i. That systemic delays in processing and deciding the grievance resulted in a denial of procedural fairness and natural justice.
 - ii. The Commissioner erred in law in interpreting ss. 31(1) of the RCMP Act as being applicable to so called policy grievances.
- iii. The commissioner erred in not finding that the delay in expressing a rationale for the linguistic profile was prejudicial to the member.
- iv. The evidence disclosed to the member was insufficient to form the basis of establishing Priority I designation.
7. Opinion regarding the Royal Canadian Mounted Police Operational Manual Policy number 54.3, the Responsibility to Report.
 - (i) Is there an obligation to report following a major police incident?
 - (ii) What is the extent of the responsibility to report?
 - (iii) What rights do members have in refusing to report?
 - (iv) If reporting, what rights should members bear in mind?

Shared Services Canada

ISSUE: Government has decreed that the RCMP will be one of those 44 agencies contributing to the formation of a new entity known as Shared Services Canada (SSC). It is their intention that certain Civilian Members (CMs) of the RCMP and their duties will be moved to SSC. What positions and numbers of bodies at this point in time are unknown.

To achieve the move of the CMs to SSC the Government is invoking Orders in Council (OIC). It is our understanding that the SRRs who represent the CMs have not received transparent information from either Senior Management of the RCMP or the Government but the transition to this new entity is moving along rather swiftly.

LEGAL ADVISE BEING SOUGHT:

Our lawyer is to research the OIC to determine its legal validity to move CMs to SSC given the other complex issues surrounding the Category of Employee Study that we are currently dealing with. The lawyer is also to research and recommend what legal remedy, if any, can/should be pursued.

RBC Group Banking Plan for Employees of the Royal Canadian Mounted Police

RBC Royal Bank in cooperation with the Mounted Police Members' Legal Fund has designed a Group Banking plan to help you meet your financial needs with access to a full range of banking and financial services. Our knowledgeable staff will ensure that employees associated with the RCMP receive the advice you need, whether it's managing a budget, establishing a mortgage or saving for the trip of a lifetime.

As an employee of the RCMP you will enjoy a wealth of benefits including:

- A choice of banking packages with special offers on premium packages
- Personal financial advice — one on one or through group seminars
- A single point of contact for all your financial needs
- More savings with lower banking fees and preferred interest rates

To access a special Group Banking site and to discover the benefits RBC has to offer to you, please check: <http://www.rbcroyalbank.com/group-banking/052378814/index>

To take advantage of the group banking offer or if you have any questions, ***please refer to the contact information below.***

Royal Canadian Mounted Police – Contact Information

General contact information is provided for your convenience. RBC has an extensive branch, mobile and online network. Please choose the most convenient method for your needs. When contacting a local branch, please ask for:

- An Account Manager, for your Everyday Banking Needs, or
- A Mortgage Specialist to discuss home financing, or
- An Investment Retirement Planner for investment advice

The local branch manager can also be a resource to direct you to the most appropriate officer.

For more branch locations and hours of operation, please call: 1-800-769-2511

Other resources include:

- Home Financing Inquiries, Mortgage Specialist 1-877-769-2570
- Investment Planning <http://www.rbcfinancialplanning.com/> or 1-800-463-3863
- RBC Credit Solutions 1-800-769-2511, or Your Local Branch
- Visa Card Solutions www.rbcroyalbank.com/rewardsintro
- Branch & ATM Locator, <http://maps.rbc.com/index.en.asp>
- Online Banking, www.rbcroyalbank.com/online/index.html

A SHORT NOTE FROM A MEMBER DATED SEPTEMBER 6, 2011.

“The financial support provided by the Mounted Police Members' Legal Fund was instrumental in resolving an ongoing promotional dispute. Thanks to all.”
(Name withheld at the member's request).



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



APPLICATION FOR MEMBERSHIP TO THE MOUNTED POLICE MEMBERS' LEGAL FUND

THE LEGAL FUND

The Mounted Police Members' Legal Fund (Legal Fund) is a not for profit private corporation set up in 1997 by the majority of Staff Relations Representatives to generally fund actions to bring a resolution of issues between Regular and Civilian members of the RCMP, who belong to the Legal Fund, and the Government of Canada and to fund 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 available within the RCMP or the Government of Canada. We are concerned primarily with members' pay, benefits and rights.

MEMBER Complete and mail to your Staff Relations Representative (SRR).

Name _____
(Print)

(Detachment, section, unit, squad, etc.)

Division _____ Regimental# _____

Collator Code _____ HRMIS# _____

I hereby authorize a payroll deduction from my pay and authorize transfer of those funds to the Mounted Police Members' Legal Fund.

Signature _____

Date _____

Civilian Member Issues

According to a survey done in January 2011 there were 19,272 Regular Members and 3,730 Civilian Members actually working for the Force. On the date of this article, there are 17,022 Members, both Regular and Civilian, belonging to the Legal Fund (15,796 Regular Members and 1,226 Civilian Members). We often get queries from Civilian Members asking, "What are you doing for us"? We do not do anything different with respect to our review and procedures for handling a Civilian Member application for assistance than we do for Regular Member requests. Our answer therefore is usually the same, "What we are doing for you is whatever we would do on an approved request by any member of the Legal Fund be they a Regular or Civilian Member. Commitment to the Legal Fund by Civilian Members is considerably less from a percentage viewpoint than that of Regular Members, nevertheless we support the Civilian Members requests with the same vim and vigour that we apply to the Regular Member requests regardless of their overall participation.

Over the years we have not had many individual applications for assistance from Civilian Members. There is the appearance that many Civilian Members are too shy to commence proceedings where Regular Members may be a bit bolder in this area. We have however had a number of issues affecting groups of Civilian Members which we have followed through the legal or other processes spending in excess, overall, the amount deducted from the Civilian Members for their membership. The additional funding of course coming from the membership of your colleagues, the Regular Members. That is in fact what we are all about, one for all and all for one just like the Three Musketeers of literary fame.

In reviewing our files, while the majority are in relation to issues encountered by Regular Members, many of the decisions have improved the conditions of Civilian Members working in the same discipline. Positive decisions on matters such as work place safety, harassment and defamation many times solved problems being encountered by both and, as we do not keep a record whether individual member requests come from Regular or Civilian Members I cannot site individual types of cases. Some of the matters affecting groups of CMs and which we have worked on or are currently being pursued are:

Employment Insurance Premiums Payment after 20 years. - This file goes back to 1998 and while I can clearly see that Regular Members were affected, I do not have any information to the effect that Civilian Members faced the same fate but I suspect they did. A Legal Opinion was requested and received at a cost in excess of \$7,000. The result however was that there would be no chance of success in having this matter overturned; FLI-FIT Group Pay. Cost over \$190,000. But we tried; ETEC Pay; Category of Employees - Save our CMs; ETECs again - Pay/Benefits; CM LES to Pension Reform; FTEEC; Pay Raise Roll Back; Service Pay for CMs; CM Pension Act Changes; PIPSC; Classification SPS-ETEC-06 Positions; Shared Services and Health Issues.

We welcome your queries and your applications for membership.