

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**JACK RONALD COWALCHUK**

Grievor

and

**TREASURY BOARD  
(Royal Canadian Mounted Police)**

Employer

*Before:* Yvon Tarte, Vice-Chairperson

*For the Grievor:* Michael Segal, Counsel

*For the Employer:* Keith Willis

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Heard at Ottawa, Ontario,  
May 3, 1996.

## DECISION

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Mr. Cowalchuk has worked on a full-time basis as an Architectural Security Consultant (GTEC-6) in the Security Systems Branch of the Royal Canadian Mounted Police (R.C.M.P.) since 1979. At the time of his engagement on a full-time basis in March 1979, the grievor entered in an employment contract (Exhibit G-2) by which he signed on as a civilian member and recognized the authority of the R.C.M.P. Commissioner to discharge him. The Oath of Office taken by Mr. Cowalchuk at the time stated that he would faithfully, diligently and impartially execute and perform the duties required of him as a member of the R.C.M.P. Mr. Cowalchuk has never taken an oath as a peace officer.

Mr. Jacques Courteau, a lawyer with the R.C.M.P. personnel services testified that the engagement document signed by the grievor and the Oath of Office taken by him were reserved for members of the Force appointed pursuant to subsection 7(1) of the *Royal Canadian Mounted Police Act*. According to Mr. Courteau the R.C.M.P. hires both regular and civilian members. Furthermore not all members of the Force are sworn in as peace officers. Only members of the Force can use the grievance procedure set out in section 31 of the *Royal Canadian Mounted Police Act*.

Mr. Cowalchuk presented such a member grievance on 10 December 1993 with respect to the assessment of his educational qualifications. Once the R.C.M.P. grievance procedure had been exhausted, Mr. Cowalchuk sought to refer his grievance to adjudication under section 92 of the *Public Service Staff Relations Act*. The reference document (Form 14) refers to the R.C.M.P. as employer.

On September 26, 1995, Mr. Willis wrote to the Board to advise that "Mr. Cowalchuk is not an employee subject to the *Public Service Staff Relations Act*". Both parties then exchanged fairly detailed correspondence on the issue of jurisdiction to hear Mr. Cowalchuk's grievance. This hearing was held to give the parties a further opportunity to discuss the matter.

### ARGUMENTS AS TO JURISDICTION

#### For the Grievor:

The arguments presented by Mr. Cowalchuk's counsel basically centered on the Federal Court of Appeal case in Her Majesty the Queen in Right of Canada and

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Yvon R.H. Gingras, (1994), 2 F.C.R. (4th) 734, in which Mr. Justice Décaré stated at pages 753 and 754:

4. *Parliament has chosen to indicate by legislation rather than by regulation the persons for whom the Treasury Board, on behalf of Her Majesty, will be the employer and those for whom it will not: any change of status in this regard therefore can only be made by legislation;*

5. *The RCMP is a division or a section of the public service of Canada within the meaning of the Financial Administration Act and is a department within the meaning of that Act; its members are therefore for the purposes of the Act "persons employed in the public service of Canada"; further, the definition of "employee" in section 2 of the Public Service Staff Relations Act, by excluding members of the RCMP from the definition "person employed in the Public Service" for the purposes of that Act, confirms that the latter are in any case "persons employed in the Public Service";*

6. *The RCMP (and not merely its civilian personnel) is listed in Part I of Schedule I among the departments and other portions of the public service of Canada for which Her Majesty, represented by the Treasury Board, is the employer;*

The R.C.M.P. is listed in Part I of Schedule I of the *Public Service Staff Relations Act* which enumerates those portions of the Public Service of Canada in respect of which Her Majesty as represented by the Treasury Board is the employer.

The only persons who work for the R.C.M.P. who are excluded from the application of the *Public Service Staff Relations Act* are those who are employed as members or special constables or who are employed by the Force under conditions substantially the same as those of a member. This exclusion contained in the definition of employee in section 2 of the *Public Service Staff Relations Act* must therefore be limited to members of the R.C.M.P. who are peace officers. Since Mr. Cowalchuk is not a peace officer, he cannot be excluded from the application of the statute.

Had Parliament truly wanted to exclude the R.C.M.P. from the application of the *PSSRA* it would have included the Force in Part II of Schedule I.

For the Treasury Board:

In order to succeed in this endeavour, Mr. Cowalchuk must show that he is not a member of the R.C.M.P. He has failed to do so. Mr. Cowalchuk was hired under section 7 of the *RCMP Act* which empowers the Commissioner of the Force to appoint members who are not officers. As such Mr. Cowalchuk is excluded from the application of the *PSSRA* by the statute's definition of employee.

The Gingras decision dealt with a different matter and is of no use in this case. The fact that Mr. Cowalchuk may be employed in the Public Service does not change his status as a member of the R.C.M.P. Under the definition of employee in the *PSSRA*, only civilian employees of the Force can benefit from its provisions.

Mr. Cowalchuk who is a member of the R.C.M.P. has no authority to file a grievance under section 92 of the *PSSRA*.

REASONS FOR DECISION

The Engagement Document signed by Mr. Cowalchuk (Exhibit G-2) clearly states that Mr. Cowalchuk undertook in 1979 "to engage, enlist and serve in the Royal Canadian Mounted Police ...". The Engagement Document also indicates that Mr. Cowalchuk's hiring is subject to meeting the physical requirements of the R.C.M.P. as determined by medical examination. Finally, when Mr. Cowalchuk took his Oath of Office in March 1979 (also Exhibit G-2) he swore that he would "faithfully, diligently and impartially execute and perform the duties required of [him] as a member of the Royal Canadian Mounted Police ...". Mr. Cowalchuk signed the grievance which he now wants referred to adjudication as a member of the Force.

The Gingras decision (*supra*) relied on heavily by Mr. Cowalchuk recognized that members of the R.C.M.P. were employees for whom the Treasury Board was the employer only for the purposes of the Bilingualism Bonus Plan introduced by the Government of Canada on October 15, 1977. Mr. Justice Décary, in his reasons for judgment implicitly recognizes that members of the Force are in fact excluded from the application of the *PSSRA*.

Pursuant to section 92 of the *PSSRA* only an employee may refer a grievance to adjudication. Parliament has seen fit to exclude from the definition of employee under the *PSSRA* persons who, like Mr. Cowalchuk, are commonly referred to as civilian members of the R.C.M.P.

I must therefore conclude that I am without jurisdiction to hear this reference to adjudication.

**Yvon Tarte,  
Vice-Chairperson.**

OTTAWA, June 21, 1996.