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# A Matter of Trust: Unanswered Questions

*Alan Gilmore*

In June 2007, the Minister of Public Safety and the President of Treasury Board released *A Matter of Trust*, the report of the independent investigator into matters relating to the RCMP pension and insurance plans. The investigator addressed certain questions he was asked to examine and ultimately recommended against a full public inquiry, but recommended the establishment of a Task Force to review RCMP governance and culture.

*A Matter of Trust* examines the RCMP's response to allegations of the improper use of pension and insurance plan funds for purposes unrelated to these plans, nepotism in staffing and contract splitting with service providers. It concludes that:

What happened in the administration of the RCMP pension and insurance plans constituted a breach of fundamental trust between management of the RCMP and its current and former members...After shifting through the various versions of the events, the picture of the RCMP and its culture that has emerged is one of mistrust and cynicism (*A Matter of Trust*, p. 3).

While such a sweeping observation appears to be an all encompassing explanation for the events, it is the contention of this paper that it leaves key questions unanswered which go to the heart of public administration. The central question being: Why did the collective array of internal and external institutional checks established to prevent these improprieties fail? And, what does their failure tell us about the causes that appear to undermine the effectiveness of these institutions?

The RCMP pension fund totaled about \$14.2 billion as of March 31, 2007 and its net assets are invested in capital markets by the Public Sector Pension Investment Board. None of the wrongdoing related to these funds. The balance of the various RCMP sponsored insurance plans at the end of 2006 was about \$84 million. A pri-

vate sector company invests the premiums and pays the claims for a flat fee per claim and a percentage of the overall premiums.

The wrongdoing relates to the RCMP's administration of the plans, including the contributors' databases, the collection of premiums and the preparation of reports. These maintenance costs averaged about \$9 million annually (*A Matter of Trust*, pp. 5-6). The Director of the National Compensation Policy Centre (NCPC) within the RCMP Human Resources Branch was directly responsible for these administrative matters. The Branch was also responsible for initiatives to modernize the administration, including outsourcing the administration. The RCMP Chief of Human Resource Officer (CHRO), reporting directly to the Commissioner, had overall responsibility for the Human Resources Branch.

In addition to the work of the Independent Investigator, inquiries into the alleged irregularities were conducted by the RCMP's internal audit function, the Ottawa Police Service, the RCMP's Code of Conduct Investigators and the Auditor General of Canada.

The internal audit was requested by the Commissioner of the RCMP in June 2003. In October/November 2003 the Commissioner, the Treasury Board Secretariat and the Office of the Auditor General were advised of the results of the internal audit in a report entitled *Pension Plan: Administration Audit* (IA Audit). The audit reported that the NCPC had inappropriately charged certain expenses to the pension plan, had engaged in contract splitting, had used the services of Consulting and Audit Canada (CAC) to bypass contracting regulations and paid it a 15 percent administration fee which it charged to the Pension Plan, and that it had hired casual employees during the summer months many of whom were related to employees within the



**Alan Gilmore**

Alan Gilmore, Ph.D., is a former senior principal in the Office of the Auditor General of Canada. He has extensive experience with accountability and governance frameworks, regulatory programs, and management control systems. He is professor of Public Affairs Ethics at Saint Paul University, Ottawa, and he is an Associate with the strategic policy and management consulting firm Sussex Circle. Comments on this article may be sent to [argilmore@rogers.com](mailto:argilmore@rogers.com).

Human Resources Directorate at salaries much greater than were being paid to students hired through programs of the Public Service Commission.

As a result of the audit the CHRO stepped down, but remained an employee until April 2004. In November 2003 the NCPC Director was relieved of his duties, but remained an employee until his leave entitlements ran out. He resigned in June 2005. At least during November 2003 the RCMP assisted the Director to find a job in another government department.

Perceiving that no immediate action had resulted from the internal audit, the parties who had brought the concerns to the attention of the Commissioner pressed for further action, particularly for a criminal investigation. A formal complaint was requested by the new CHRO and was submitted on January 5, 2004. The complaint noted that many "employees, and especially senior managers, are dumbfounded how this behaviour has been allowed to happen with the open knowledge of all levels of the RCMP" (*A Matter of Trust*, p. 11). The complainant also wrote to the President of the Treasury Board, the Minister responsible for the RCMP, and the Auditor General. The Independent Investigator concluded that to his knowledge the Auditor General did not reply. He does not indicate whether or not the other parties replied. Another complainant wrote to the RCMP Ethics Advisor who complimented her for bringing the

issues forward, and advised her that the Commissioner was aware of the issues and to leave the matters to others to address them.

On March 8, 2004 the RCMP asked the Ottawa Police Service (OPS) to conduct an investigation. A summary of the results was reported on June 24, 2005 to the Commissioner. The report confirmed the findings of the internal audit, but the Crown Attorney concluded that there was “no reasonable prospect for conviction” for a Criminal Code offence. When the RCMP officer assisting the OPS decided to pursue remaining concerns relating to funds being moved from the insurance plan, two RCMP Superintendents delivered a written order to the officer to cease any further investigative activity (A Matter of Trust, pp. 13-14).

An Independent Investigator questioned the credibility of the criminal investigation. His report notes that: the memorandum of understanding stated that the OPS lead investigator was to report to an RCMP Assistant Commissioner; the criminal investigation was for the most part carried out by RCMP officers who were treated as RCMP employees by RCMP management; senior RCMP officers approved the plans for the investigation; and, the entire investigative file was retained by the RCMP. Consequently, the Independent Investigator recommended that the Ontario Provincial Police review the file to determine the adequacy of the OPS investigation, including matters relating to the insurance plan funds that remain unexamined (A Matter of Trust, pp. 20-21).

Given the Crown Attorney’s conclusions that there were insufficient grounds to proceed criminally, the RCMP, in early July 2005, appointed a Deputy Commissioner as Appropriate Officer to conduct an internal investigation to determine whether there were any potential violations of the RCMP Code of Conduct. The Appropriate Officer’s report was issued in July 2006. However, the validity of the investigation was called into question because of defects in the process, particularly that too much time had elapsed. The Independent Investigator concluded that had a proper process been followed the Appropriate Officer “could have commenced formal disciplinary action against several members” (A Matter of Trust, p. 23).

In May 2005, the RCMP’s internal audit group issued a report on the RCMP Life and Disability Insurance plans. It found that the control framework for the management of the plans was not effective, contracting activities were not compliant with Treasury Board contracting policy and inappropriate expenses were charged to the plans (RCMP Life and Disability Insurance Audit Final Report, May 2005).

In November 2006, the Office of the Auditor General (OAG) issued a report on the administration of the pension and insurance fund. Chapter 9 of the report provides certain additional information, including:

- The NCPC Director issued consulting contracts for over \$20 million without competition (para 9.13).
- Over \$3 million was inappropriately charged to the pension fund to “relieve budget pressures on managers” responsible for the modernization projects (para 9.13).
- The RCMP persuaded the private insurance carrier to subcontract work to a second firm to administer the insurance plans; this resulted in a \$4.6 million contract being let without competition (para 9.13).
- The forensic audit conducted as part of the OPS investigation of 135 contracts worth over \$20 million found that the “contracting process used by the NCPC would not pass the test of public scrutiny” (para 9.26).
- The OPS interviews with 65 of the casual employees hired by the NCPC Director found that 49 had friends and family who worked for the RCMP (para 9.23), and “were paid double the going rate for students” (para 9.36).
- The OPS report identified nine regular and civilian members; the investigation by the Appropriate Officer found that disciplinary action was warranted against four (para 9.52).
- The NCPC Director used Consulting and Audit Canada (CAC) to hire individuals and firms already chosen to do the work for which CAC received a 15 percent fee for finding a qualified supplier and other services (para 9.33).
- Without a contract, the NCPC Director instructed the private insurance carrier to begin preparing for outsourcing the

administration of the insurance plans. When it was concluded that company could not perform the services the RCMP persuaded it to “act as a go-between for payments to another firm...which took on the job of administering the insurance plans” (para 9.34).

The OAG noted the involvement of the Treasury Board Secretariat. The OAG states that the NCPC discussed with the Treasury Board Secretariat the nature of the pension plan administrative costs that could be allocated to the plan (para 9.10). The results of that discussion were not published. The OAG also notes that the Treasury Board approved the RCMP submission to outsource the administration of the pension plan even though the submission contained little analysis of options, was based on costs estimates provided by supplier, and was challenged by Public Works Government Services. Over a two-year period the RCMP informed the Secretariat that the costs had increased from \$2.8 million to \$8.1 million (para 9.40-9.41). In addition, the OAG pointed out that the RCMP Finance Branch relied entirely on the NCPC and did not challenge the numbers provided by the NCPC and presented to the Treasury Board Secretariat.

### Key Unanswered Questions

The report of the Independent Investigator lays much of the blame for the maladministration on the RCMP at the feet of the Commissioner. As a result, the Commissioner resigned. On December 14, 2007, *Rebuilding Trust – the Report of the Task Force on Governance and Cultural Change in the RCMP* recommended that the RCMP have:

- greater independence from government and separate employer status;
- a new Board of Management to independently oversee the RCMP’s financial affairs, personnel, property, services, resources and procurement; and,
- a new independent complaints and oversight commission with enhanced authority.

These recommendations for change coupled with the Independent Investigator’s conclusion that he had “seen no indication in [his] investigation that there are important facts lurking beneath the surface that only a public inquiry could expose” have

diverted attention from key questions that remain unanswered.

These questions focus on why the internal and external institutions established to prevent wrongdoing failed to do so. The questions include:

1. Why did the RCMP directorates charged with maintaining probity in staffing, contracting and finance fail to do so? Why were they apparently so easily overridden?
2. If the knowledge of the improprieties, as alleged, was widely known among senior managers, why didn't they act?
3. How widespread was the effort to circumvent government hiring policies? Who were the family and friends employed in the RCMP whose children were employed by the Human Resources Branch at higher salary than other students employed in government departments? What action was taken with regard to these persons?
4. Given the nature of the allegations why didn't the RCMP internal audit group immediately conduct a forensic audit?
5. In light of the seriousness of the findings why did the audit report's executive summary appear to excuse the NCPC's misadministration by explaining that the management of NCPC was "so focused on the attainment of their business line objectives that, particularly during the outsourcing of administrative functions, that their comptrollership functions were neglected" (IA Audit, p. 1)?
6. What are the implications of the reports of the Independent Investigator and the Task Force on Governance and Culture on a government wide basis? Does the similar overriding of financial and management controls in HRDC, the Firearms Control Program, the Sponsorship Program, the Office of the Privacy Commissioner and the Office of the Correctional Investigator indicate that governance and culture of other departments is at risk? Do all departments need a Board of Management?
7. Why didn't the Treasury Board Secretariat and the Treasury Board reject the RCMP submission to outsource the administration of the pension plan in the face of criticism from PWGSC and the escalating costs of the contract?
8. Why didn't the Auditor General examine the apparent lack of due diligence by the Treasury Board and the Treasury Board Secretariat in accepting the RCMP's flawed submission?
9. The Office of the Auditor General conducts annual audits of the financial statements of the Pension Plan and it also examines on an annual basis selected transactions in departments in order to give an opinion on the accuracy of the government's financial statements published in the Public Accounts of Canada. If the irregularities were so well known, then why didn't these audits detect them? In addition, why didn't the OAG reply to the RCMP complainant who forwarded information about the wrongdoing?
10. Who were the 135 contractors that received contracts as a result of a process that would not pass the test of public scrutiny? What action has been taken against these contractors? Do they have any ties to the RCMP or others involved with the government?
11. Why did respected insurance management companies participate in the RCMP's scheme?
12. Why has the contract with the company that received the outsourcing contract for administering the pension plan not been rebid on a competitive basis?
13. Why did Consulting and Audit Canada participate in circumventing the contract regulations to hire suppliers chosen by the RCMP? What action, if any, has been taken to address this issue?
14. Why didn't the government, as recommended by the Independent Investigator, engage the Ontario Provincial Police to review the reliability the OPS investigation?
15. Is it possible to maintain probity in government if agencies such as Consulting and Audit Canada and suppliers of services are apparently willing to co-operate in circumventing government contracting regulations and policies?

The reports of the Independent Investigator and the Task Force on Governance and Cultural Change in the RCMP clearly conclude that the problems in the RCMP can be fixed by adding more institutions to the array of internal and external ones that already exist. However, before adding institutions, it would seem incumbent on the government to first ascertain why the existing internal and external institutions were ineffective since the new ones may be equally vulnerable to the same undermining factors, and other departments and agencies may be equally at risk. Until these issues are examined key facts will continue to lurk beneath the surface. ❖