Royal Canadian Mounted Police
External Review Committee

MARCH TO SEPTEMBER 2015

communiqué

IN THIS ISSUE

UPDATE - Scope of Case File Referrals to the ERC

The scope and nature of the matters referred by the RCMP to the ERC for review changed as of November 28, 2014, when amendments to the *RCMP Act, RCMP Regulations* and associated *Commissioner's Standing Orders* came into force as part of implementing the *Enhancing RCMP Accountability Act*. The ERC now receives two streams of case file referrals from the RCMP:

i. files under the ***former legislation*** (for cases that commenced within the RCMP prior to the new provisions coming into force); and
ii. files now being referred under the ***current legislation***.

The ERC will continue to issue findings and recommendations on ***former legislation*** cases for referred grievances, appeals of discipline (adjudication) board decisions and appeals of discharge/demotion board decisions, until all referable matters commenced within the RCMP before November 28, 2014 have been completed. The format for naming findings and recommendations for former legislation files remains the same - i.e., G for grievances, D for discipline and R for discharge files, with a number following (e.g., G-107 or D-025).

For findings and recommendations on case files referred under the ***current legislation***, files have been divided into two broad administrative categories: conduct appeals; and, non-conduct appeals (i.e., appeals of written decisions on harassment complaints, decisions to discharge or demote a member, stoppage of member pay and allowances, and revocation of an appointment). ERC findings and recommendations for referred appeals of conduct authority or conduct board decisions will be named with a C followed by a number (e.g., C-001). Findings and recommendations for referred appeals in non-conduct matters will be numbered similarly (e.g., NC-001).

Between March and September 2015, the RCMP External Review Committee (ERC) issued the following recommendations:

Current Legislation Cases:

C-001 On December 23, 2014, the Appellant was served with a Notice of Conduct Meeting prepared by the Respondent. The Notice identified five *Code of Conduct* allegations against the Appellant. Following a Conduct Meeting, the

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Respondent issued a decision in which he found that three of the allegations were established. The Respondent imposed conduct measures consisting of two reprimands, a forfeiture of annual leave for a period of 40 hours and a direction to work under close supervision for a period of one year. The Appellant appealed the decision and the conduct measures imposed.

ERC Findings: The ERC observed that if an appeal relates to the conduct measures identified in paragraphs 45.15(1)(a) to (e) of the *Royal Canadian Mounted Police Act* (*Act*), or to any finding that resulted in the imposition of such measures, the appeal is referred to the ERC. It found that the present conduct appeal did not fall within the scope of paragraphs 45.15(1)(b), (c), (d), or (e) as those paragraphs identify conduct measures which were not at issue.

The ERC then considered whether the imposition of a forfeiture of annual leave for a period of 40 hours made the appeal referable under paragraph 45.15(1)(a), which refers to "*a financial penalty of more than one day of the member's pay*". The ERC determined that paragraph 45.15(1)(a) does not include a forfeiture of annual leave.

The ERC noted that there are multiple conduct measures the imposition of which would have a financial impact on a member but which are not a financial penalty deducted from a member's pay. Sections 4 and 5 of the *Commissioner's Standing Orders* (*Conduct*) (SOR/2014-291) set forth the various conduct measures certain conduct authorities may impose. In both sections, a clear distinction is made between a financial penalty deducted from a member's pay and other conduct measures which have or may have financial impacts on the member. Such other conduct measures include ineligibility for promotion, deferment of pay increment, reduction to the next lower rate of pay and forfeiture of annual leave. This distinction is instructive. It clarifies that a financial penalty deducted from a member's pay is a conduct measure separate from a forfeiture of annual leave and from those other conduct measures which, in addition to their immediate effect, also have indirect financial consequences to the member. Only an appeal involving a financial penalty of more than one day deducted from the member's pay is referable to the ERC pursuant to paragraph 45.15(1)(a) of the *Act*.

ERC Recommendation: This conduct appeal is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the appeal or make a recommendation.

C-002

The Respondent was aware of the Appellant's identity and alleged contraventions of the RCMP *Code of Conduct* by January 2014. In early 2015, the Respondent applied for and received an extension of the one-year limitation period for imposing conduct measures. The Appellant was then served with a Notice of Conduct Meeting prepared by the Respondent. The Notice set out two allegations which the Appellant later addressed at a conduct meeting. The Respondent issued a decision in which he found that both allegations were established and ordered that two conduct measures be imposed. The first conduct measure was a reassignment to another position not involving a relocation or demotion. The second was a forfeiture of annual leave for a period of 48 hours. The Appellant appealed the decision and the conduct measures imposed.

ERC Findings: The ERC observed that five types of conduct appeals are referable to the ERC in accordance with paragraphs 45.15(1)(a) to (e) of the *Royal Canadian Mounted Police Act* (*Act*). It found that the

present conduct appeal did not fall within the scope of paragraphs 45.15(1)(b), (c), (d), or (e), as those paragraphs identify conduct measures which were not at issue.

Paragraph 45.15(1)(a) of the *Act* refers to an appeal that involves "*a financial penalty of more than one day of the member's pay*". The ERC found that a forfeiture of annual leave does not fall within the scope of paragraph 45.15(1)(a).

The ERC noted that there are multiple conduct measures the imposition of which would have a financial impact on a member but which are not a financial penalty deducted from a member's pay. Sections 4 and 5 of the *Commissioner's Standing Orders* (*Conduct*) (SOR/2014-291) set forth the various conduct measures certain conduct authorities may impose. In both sections, a clear distinction is made between a financial penalty deducted from a member's pay and other conduct measures which have or may have financial impacts on the member. Such other conduct measures include ineligibility for promotion, deferment of pay increment, reduction to the next lower rate of pay and forfeiture of annual leave. This distinction is instructive. It clarifies that a financial penalty deducted from a member's pay is a conduct measure separate from a forfeiture of annual leave and from those other conduct measures which, in addition to their immediate effect, also have indirect financial consequences to the member. Only an appeal involving a financial penalty of more than one day deducted from the member's pay is referable to the ERC pursuant to paragraph 45.15(1)(a) of the *Act*.

ERC Recommendation: This conduct appeal is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the appeal or make a recommendation.

C-003

On February 26, 2015, the Appellant was served with a Notice of Conduct Meeting prepared by the Respondent. The Notice identified one *Code of Conduct* allegation against the Appellant. Following a Conduct Meeting, the Respondent issued a decision in which she found that the allegation was established. The Respondent imposed conduct measures consisting of a reprimand and a forfeiture of 15 days (120 hours) of annual leave. The Appellant appealed the decision and the conduct measures imposed.

ERC Findings: The ERC observed that if an appeal relates to the conduct measures identified in paragraphs 45.15(1)(a) to (e) of the *Royal Canadian Mounted Police Act* (*Act*), or to any finding that resulted in the imposition of such measures, the appeal is referred to the ERC. It found that the present conduct appeal did not fall within the scope of paragraphs 45.15(1)(b), (c), (d), or (e) as those paragraphs identify conduct measures which were not at issue.

The ERC then considered whether the imposition of a forfeiture of annual leave for a period of 120 hours made the appeal referable under paragraph 45.15(1)(a), which refers to "*a financial penalty of more than one day of the member's pay*". The ERC determined that paragraph 45.15(1)(a) does not include a forfeiture of annual leave.

The ERC noted that there are multiple conduct measures the imposition of which would have a financial impact on a member but which are not a financial penalty deducted from a member's pay. Sections 4 and 5 of the *Commissioner's Standing Orders* (*Conduct*) (SOR/2014-291) set forth the various conduct measures certain conduct authorities may impose. In both sections, a clear distinction is made between a financial penalty deducted from a member's pay and other conduct measures which have or may

have financial impacts on the member. Such other conduct measures include ineligibility for promotion, deferment of pay increment, reduction to the next lower rate of pay and forfeiture of annual leave. This distinction is instructive. It clarifies that a financial penalty deducted from a member's pay is a conduct measure separate from a forfeiture of annual leave and from those other conduct measures which, in addition to their immediate effect, also have indirect financial consequences to the member. Only an appeal involving a financial penalty of more than one day deducted from the member's pay is referable to the ERC pursuant to paragraph 45.15(1)(a) of the *Act*.

ERC Recommendation: This conduct appeal is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the appeal or make a recommendation.

C-004

The Appellant was served with a Notice of Conduct Meeting prepared by the Respondent. The Notice identified one *Code of Conduct* allegation against the Appellant. Following a Conduct Meeting, the Respondent issued a decision in which he found that the allegation was established. The Respondent imposed a conduct measure of a forfeiture of annual leave for a period of six (6) days (48 hours). The Appellant appealed the conduct measure imposed.

ERC Findings: The ERC observed that if an appeal relates to the conduct measures identified in paragraphs 45.15(1)(a) to (e) of the *Royal Canadian Mounted Police Act* (*Act*), or to any finding that resulted in the imposition of such measures, the appeal is referable to the ERC. It found that the present conduct appeal did not fall within the scope of paragraphs 45.15(1)(b), (c), (d), or (e) as those paragraphs identify conduct measures which were not at issue.

The ERC then considered whether the imposition of a forfeiture of annual leave for a period of six (6) days or 48 hours made the appeal referable pursuant to paragraph 45.15(1)(a), which refers to "*a financial penalty of more than one day of the member's pay*". The ERC determined that paragraph 45.15(1)(a) does not include a forfeiture of annual leave.

The ERC noted that there are multiple conduct measures the imposition of which would have a financial impact on a member but which are not a financial penalty of, or deducted from, a member's pay. Sections 4 and 5 of the *Commissioner's Standing Orders* (*Conduct*) (SOR/2014-291) set forth the various conduct measures certain conduct authorities may impose. In both sections, a clear distinction is made between a financial penalty deducted from a member's pay and other conduct measures which have or may have financial impacts on the member. Such other conduct measures include ineligibility for promotion, deferment of pay increment, reduction to the next lower rate of pay and forfeiture of annual leave. This distinction is instructive. It clarifies that a financial penalty deducted from a member's pay is a conduct measure separate from a forfeiture of annual leave and from those other conduct measures which, in addition to their immediate effect, also have indirect financial consequences to the member. Only an appeal involving a financial penalty of more than one day deducted from the member's pay is referable to the ERC pursuant to paragraph 45.15(1)(a) of the *Act*.

ERC Recommendation: This conduct appeal is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the appeal or make a recommendation.

C-005 The Appellant was served with a Notice of Conduct Meeting prepared by the Respondent. The Notice identified one *Code of Conduct* allegation against the Appellant. Following a Conduct Meeting, the Respondent issued a decision in which he found that the allegation was established. The Respondent imposed two conduct measures consisting of a forfeiture of annual leave for a period of five (5) days (40 hours) and a direction to the Appellant to review an RCMP policy regarding emergency vehicle operations. The Appellant appealed both the finding of the Respondent and the conduct measure imposed.

ERC Findings: The ERC observed that if an appeal relates to the conduct measures identified in paragraphs 45.15(1)(a) to (e) of the *Royal Canadian Mounted Police Act* (*Act*), or to any finding that resulted in the imposition of such measures, the appeal is referable to the ERC. It found that the present conduct appeal did not fall within the scope of paragraphs 45.15(1)(b), (c), (d), or (e) as those paragraphs identify conduct measures which were not at issue.

The ERC found that the direction to the Appellant to review an RCMP policy did not fall within paragraph 45.15(1)(a) of the *Act* and then considered whether the imposition of a forfeiture of annual leave for a period of five (5) days (40 hours) made the appeal referable pursuant to paragraph 45.15(1)(a), which refers to "*a financial penalty of more than one day of the member's pay*". The ERC determined that paragraph 45.15(1)(a) does not include a forfeiture of annual leave.

The ERC noted that there are multiple conduct measures the imposition of which would have a financial impact on a member but which are not a financial penalty of, or deducted from, a member's pay. Sections 4 and 5 of the *Commissioner's Standing Orders* (*Conduct*) (SOR/2014-291) set forth the various conduct measures certain conduct authorities may impose. In both sections, a clear distinction is made between a financial penalty deducted from a member's pay and other conduct measures which have or may have financial impacts on the member. Such other conduct measures include ineligibility for promotion, deferment of pay increment, reduction to the next lower rate of pay and forfeiture of annual leave. This distinction is instructive. It clarifies that a financial penalty deducted from a member's pay is a conduct measure separate from a forfeiture of annual leave and from those other conduct measures which, in addition to their immediate effect, also have indirect financial consequences to the member. Only an appeal involving a financial penalty of more than one day deducted from the member's pay is referable to the ERC pursuant to paragraph 45.15(1)(a) of the *Act*.

ERC Recommendation: This conduct appeal is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the appeal or make a recommendation.

NC-001 This is an appeal of a stoppage of pay and allowances order (SPAO) pursuant to the new *RCMP Act, Commissioner's Standing Orders* and Conduct Policy. On September 29, 2014, a Police Service (PS) flagged and downloaded an image of child pornography from an IP address. After securing a production order, the PS learned that the IP address was subscribed to the Appellant. The PS obtained a search warrant for the Appellant's computer devices located at his residence and executed the search. Although the Appellant's computer was highly encrypted, the PS found some evidence of child pornography on the Appellant's computer. The Appellant was suspended from duty with pay. He was later arrested for accessing and possessing child pornography.

A few weeks later, the Appellant was served with a Notice of Intent to order the stoppage of pay and allowances. The PS investigation report was provided to the Appellant the following day, although there were pages missing. The Respondent subsequently disclosed the missing pages as well as the transcripts of the three warned statements given by the Appellant. The Appellant's member representative (MR) filed written submissions objecting the SPAO. The MR argued that the Appellant was not clearly involved in the offence, the Notice was deficient and failed to contain supporting documentation and there was reasonable apprehension of bias from the Respondent. Notwithstanding the submissions, the Respondent issued the SPAO. The Appellant appealed this decision.

The Appellant argues that there is no clear involvement as required by the Conduct Policy. According to the MR, the evidence suggests that someone else could have used the Appellant's internet connection. The Appellant argues that the Respondent used the wrong standard of proof to determine whether the SPAO was warranted (*prima facie* vs balance of probabilities).

The Appellant argues that the Respondent breached his right to procedural fairness because the Notice of stoppage of pay and allowances was deficient as the grounds set forth in the Notice did not permit the Appellant to know the case to be met. Further, the disclosure was deficient as the audio/video and transcripts of the Appellant's warned statements were not provided.

ERC Findings: The ERC found that the Respondent did not apply the correct standard of proof to the requirement of clear involvement. The correct standard of proof is the balance of probabilities based on clear and cogent evidence, not a *prima facie* standard. The ERC found that any issue arising from the missing documentation from the Notice of Intent were cured when the Respondent disclosed the remaining documentation and provided the Appellant sufficient time to respond adequately to the Notice of intent. The Appellant's right to procedural fairness was not breached.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that the adjudicator allow the appeal due to an error of law in issuing the SPAO. It further recommends that the adjudicator remit the matter to the Respondent for a new decision pursuant to paragraph 47(1)(b)(i) of the *Commissioner's Standing Orders* (*Grievances and Appeals*) with direction to apply the correct standard of proof to the determination of whether the evidence demonstrates that the Appellant was clearly involved in the alleged conduct.

Former Legislation Cases:

D-127 Through the evening of January 30, 2009 and the morning of January 31, 2009, the Appellant, who was off-duty, attended the home of Mr. and Ms AB on several occasions. Mr. and Ms AB, who did not know the Appellant, allowed her to use their telephone. The Appellant consumed some beer in their presence and admitted to having consumed other beers over the course of the evening. While at the residence of Mr. and Ms AB, the Appellant contacted RCMP dispatchers several times to complain about a dispute with her ex-boyfriend, EB, who lived nearby. The dispute centred around the fact that some of the Appellant's possessions were at EB's residence and EB was refusing to let the Appellant take them away. Cst. DK responded to the complaint, attended EB's residence and determined that the matter would best be dealt with the next morning. Cst. DK advised the Appellant of that

determination. While speaking by telephone to dispatchers and to Cst. DK from the residence of Mr. and Ms AB, the Appellant became upset with the manner in which her complaint was being handled. The Appellant eventually left the ABs' residence in the early morning hours and was seen driving her truck by Ms AB. The next morning, the Appellant called the ABs' residence and asked Ms AB to "*not talk to anybody about anything that had happened the night before*".

An adjudication board (Board) held a hearing into one allegation of disgraceful conduct brought against the Appellant as a result of these events. The Appropriate Officer Representative (AOR) called several witnesses. At the close of the AOR's case, the Member Representative (MR) indicated that she would be calling no evidence. She also brought a motion for non-suit, alleging that the AOR had failed to present evidence on some of the particulars of the allegation and arguing that the particulars themselves did not disclose disgraceful conduct. The MR acknowledged to the Board that her motion would be unsuccessful if there was at least some evidence going to the essential elements of the offence of disgraceful conduct and that, in such a case, the Board would then have to decide if the allegation had been established on a balance of probabilities. Both the AOR and MR indicated an understanding that it was not the Board's role, at the stage of a non-suit motion, to weigh the evidence or assess its reliability or probative value. The Board heard the parties' submissions on the motion and adjourned the proceedings. The Board re-convened and rendered an oral decision finding that the allegation had been established. It made no mention of any decision on the motion for non-suit at that time, although in its written decision on the allegation issued later, the Board wrote that it had denied the non-suit motion. The Board then accepted a joint proposal for sanction consisting of 10 days' forfeiture of pay and a reprimand, adding a recommendation for continued counselling.

On appeal, the Appellant's main argument was that the Board had breached its duty of procedural fairness by failing to rule on the non-suit motion at the hearing and then failing to provide an opportunity to the Appellant to make thorough submissions on the allegation itself. The Appellant requested that the Commissioner of the RCMP order a new hearing into the allegation.

After the Respondent provided a submission in response to the appeal, the Appellant provided a rebuttal submission.

ERC Findings: The ERC found that members who are subject to disciplinary hearings before adjudication boards must be accorded a high degree of procedural fairness and that the right to make full closing submissions on the merits of an allegation is enshrined in subsection 45.1(8) of the *RCMP Act*. The Board had not provided to the Appellant an opportunity to make comprehensive submissions regarding the merits of the allegation and the quality, reliability and probative value of the evidence adduced. Although the MR reviewed the weight and credibility to be ascribed to the evidence in certain instances, the submissions she was making were primarily focused on the motion for non-suit, a context which differs substantively from the more thorough submissions relating to the merits of an allegation. In failing to explain and follow a clear process for the receipt of submissions, the Board breached the Appellant's right to procedural fairness and, in particular, her right to be heard as part of a fair hearing and to provide representations.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the appeal, request submissions from the parties regarding the merits of the allegation and, pursuant to paragraph 45.16(2)(c) of the *RCMP Act*, make the finding that, in his opinion, the Board should have made as to whether the allegation is established. Although typically the remedy for breach of procedural fairness is to order a new hearing, the ERC was of the view that the Commissioner, in making his own finding pursuant to paragraph 45.16(2)(c) of the *RCMP Act*, could cure the procedural breach made by the Board by obtaining and considering the parties' submissions. All the evidence was on the record and the Appellant had a full opportunity to cross-examine all of the Respondent's witnesses. A referral to a new board for a new hearing would entail significant further delay and would be subject to concerns regarding testimony provided after a delay of six years.

The ERC also recommends to the Commissioner that he rule that the rebuttal submission filed by the Appellant was not permitted pursuant to the framework governing an appeal of the Board's decision contained in the *RCMP Act*.

D-128

While on deployment to the Vancouver Olympic Games in February 2010, the Appellant was arrested for shoplifting. She was sent back to Ottawa, and suspended with pay. One allegation of disgraceful conduct was brought against her. At the hearing on the allegation, the Appellant submitted an "*admission of facts*." The admission of facts was to the effect that the [Translation] "*Appellant admits the allegation as specified in the notice of hearing*" with details on the number of items stolen and their value. In view of this admission, the Adjudication Board concluded that the allegation was established.

Witnesses were heard during the hearing into sanction. The Appellant presented as a mitigating factor that, although she had admitted committing the theft, there were stressors present which had caused major depression and she was in an altered state of mind at the time of the theft. The Adjudication Board ordered the Appellant to resign within 14 days.

On appeal, the Appellant challenged the Board's findings regarding its decision on the sanction. She specifically argued that the Board had not given sufficient weight to certain mitigating factors and failed to apply the principle of parity of sanction. The Appellant also argued that the Board had rejected part of the uncontradicted evidence of her expert witness. Finally, the Appellant challenged some of the Board's findings of fact.

ERC Findings: Adjudication boards are responsible for examining and weighing evidence submitted to them, and for assessing the credibility of witnesses. Unless a manifest or determinative error is made, the Commissioner should not modify their findings on appeal. The ERC found that the Adjudication Board had examined and assessed all the witnesses' evidence and had clearly formulated its findings in that regard in its written decision. It concluded that the Adjudication Board had not made any manifest or determinative errors in its assessment of the evidence, and the relevance of this assessment to render its decision on the sanction. In terms of the Board's treatment of the evidence submitted by the Appellant's expert witness, the Board clearly indicated in its decision why it had not subscribed to the expert's argument that the Appellant had been in an altered state of mind or automatism when she shoplifted. The Board was aware of the requirements set out in *Pizarro v. Canada* (Attorney General),

2010 FC 20, and of the importance of explaining the reasons for rejecting the evidence submitted.

To reach a decision on sanction, the Board examined the evidence submitted, all the significant and relevant mitigating and aggravating factors, and imposed a sanction within the range of those in keeping with the principle of parity of sanction. The ERC concluded that the fact that the Board had imposed a severe sanction in the case at hand did not constitute grounds for modifying the sanction in question because no manifest or determinative error was made in the Board's reasons or findings.

ERC Recommendation: The ERC recommends the appeal be dismissed.

G-599

The Grievor was deployed at the Sommet de la Francophonie from October 13 to 19, 2008. When he arrived at the hotel, the Grievor learned that he had to share his room with another RCMP member for the duration of his deployment. The Grievor did not grieve this decision.

When he returned from his deployment, the Grievor submitted a claim for private non-commercial accommodation allowance of $50 per night set out in the *Treasury Board Travel Directive* (*TBTD*). The Grievor explained that, since sharing his room did not meet the standard set by the *TBTD* for rooms in a commercial accommodation, it no longer met the definition of commercial accommodation. Consequently, the only definition that applied to his room was that of private non-commercial accommodation. According to the Grievor, he was therefore entitled to the allowance set out for this type of accommodation.

During the grievance process, the Grievor requested that the Level I Adjudicator, who had denied an incidental application for disclosure, recuse himself. The Grievor stated that the Level I Adjudicator, still assigned to the file, was in a conflict of interest further to this denial.

ERC Findings: The ERC concluded that the Grievor had not discharged his burden of proof to show that there was a reasonable apprehension of bias on the part of the Level I Adjudicator. The ERC concluded that the fact that a Level I Adjudicator made an unfavourable decision on other questions concerning a grievor did not in and of itself raise a reasonable apprehension of bias.

The ERC concluded that the *TBTD* contained no provision stating that compensation would be granted simply because the Grievor had to share his room. While the *TBTD* establishes a standard in terms of commercial accommodation, a standard is not absolute, and the Grievor nevertheless stayed in a hotel.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

[TRANSLATION]

The Commissioner denied the grievance, as recommended by the ERC. The Grievor was not eligible for the private non-commercial accommodation allowance of $50 per night set out in the TBTD as the Grievor stayed in a commercial accommodation.

G-600

The Grievor served at an isolated post with an "Environmental Allowance" (EA) classification of "3", where he lived with a number of dependants. On behalf of himself and his dependants, the Grievor filed a claim

for Vacation Travel Assistance (VTA). The Respondent received the claim on April 9, 2010. The Respondent determined that the claim was payable at a rate the Treasury Board Secretariat (TBS) published on April 1, 2010. The Grievor felt the claim was payable at higher rates published by the TBS in May 2009. In reply, the Respondent stated that the TBS archived the May 2009 rates on April 1, 2010, at which point they became inoperative and were replaced by the single, lower April 1, 2010 rate. The Grievor filed a Level I grievance, which was denied.

The grievance was resubmitted at Level II. Both parties referred to paragraph 3.5.7 of the *Isolated Posts and Government Housing Directive* (*Directive*) which provides:

> *3.5.7 The Treasury Board Secretariat will publish the amount of the fixed rate VTA for each isolated post in the spring each year on a date agreed to by the NJC IPGHC. In addition, for those isolated posts with an EA classification of 4 or 5, the fixed rate VTA will also be published in the fall each year on a date agreed to by the NJC IPGHC.*
>
> *TBS will notify departments of the rates.*
>
> *Note:*
>
> *For locations with an EA of 1, 2 or 3, the rate will apply for a 12-month period from the date it is published. For locations with an EA of 4 or 5, the rate will be in effect for a 6-month period until the next rate is published.*

The Grievor argued that the *Note* to paragraph 3.5.7 should be read strictly. He alleged that his claim was payable at the May 2009 rates as it was received less than 12 months after the May 2009 rates took effect. The Respondent replied that paragraph 3.5.7 should be read jointly with various guidance documents. She maintained that the Force followed the guidance documents as well as RCMP past practices by processing the Grievor's claim at the April 1, 2010 VTA rate.

ERC Findings: The ERC found that it would be unreasonable to apply the *Note* strictly and that the Respondent's approach was consistent with relevant authorities and past RCMP practices.

The inclusion of the *Note* in the *Directive* was not meant to create rigid effective periods for VTA rates. Rather, the *Note* was meant to highlight the distinction between annual and semi-annual rates. A note is an explanatory feature, usually drafted in plain language to provide information regarding the practical application of a provision. The *Note* does not override the words in the body of paragraph 3.5.7, which refer only to the creation of annual and semi-annual VTA rates.

The lack of rigour in the drafting of the *Note* supports the interpretation that the *Note* was meant to be descriptive only. The two sentences in the *Note* are inconsistent with each other, which means applying the *Note* strictly could lead to annual and semi-annual VTA rates expiring on different bases. The interpretation is also supported by the *Directive's* guidance documents, which reveal that a VTA rate is to apply until the TBS publishes a new rate.

Nothing in the record strengthens the Grievor's position to the extent that would necessitate a consideration of whether the grievance raises equally plausible interpretations of the *Directive*.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

G-601

In April 2007, while on maternity leave and due to personal circumstances, the Grievor moved from Surrey, British Columbia to Dartmouth, Nova Scotia (NS). In December 2007, after discussions with RCMP staffing, the Grievor

was offered a position in Halifax, NS. The Grievor accepted the position and signed the transfer form A-22A which did not include a "*cost*" transfer. In 2008, the Force initiated the Retroactive Corrective Payment of Relocation Benefits Project. The objective of the Project was to correct discrepancies in the treatment of members caused by inconsistent interpretations of the "*cost*" transfer criteria of the Treasury Board *Integrated Relocation Program* between 2001 and 2008. The Grievor applied to have her no cost transfer to Halifax, NS reviewed under this Project. The review team determined that the Grievor was ineligible to participate in the Project as she was already residing in Dartmouth, NS when her transfer was issued. The Grievor grieved this decision.

ERC Findings: The ERC observed that five types of grievances are referable to the ERC in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that the present grievance did not fall within the scope of subsection 36(d) (*Relocation Directive*). The grievance does not involve the Force's interpretation of the *IRP* itself but rather the interpretation and application of a separate, internal initiative undertaken by the Force.

ERC Recommendation: The grievance is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the matter or to make a recommendation.

G-602

In October 2000, the Grievor received a "no cost" transfer from Shelburne to Yarmouth (Nova Scotia). The Grievor did not sell his residence but commuted to work.

In 2008, the Force initiated the Retroactive Corrective Payment of Relocation Benefits Project. The objective of the Project was to correct discrepancies in the treatment of members caused by inconsistent interpretations of the "cost" transfer criteria of the Treasury Board *Integrated Relocation Program* between 2001 and 2008. The Grievor applied to have his no cost transfer to Yarmouth reviewed under the Project. The review team determined that the Grievor was ineligible to participate in the Project as his 2000 transfer was outside the scope of the review. The Grievor grieved this decision.

ERC Findings: The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that the present grievance did not fall within the scope of subsections 36(d) (*Relocation Directive*). The grievance does not involve the Force's interpretation of the *IRP* itself but rather the interpretation and application of a separate, internal initiative undertaken by the Force.

ERC Recommendation: The grievance is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the matter or make a recommendation.

G-603

The Respondent signed a Notice of Intention to Discharge the Grievor (Notice of Intention) on the basis of disability. The Grievor submitted a grievance form containing two grievances. First, the Grievor contested the issuance of the Notice of Intention. Second, the Grievor disputed the way the Force served her with the Notice of Intention. The Respondent argued that the Grievor lacked standing to grieve the first matter.

The Level I Adjudicator denied the grievance, finding that the Grievor lacked standing to grieve the issuance of the Notice of Intention. The Adjudicator stated that the standing test included a requirement that there be no other redress process within the

RCMP Act, *RCMP Regulations* or *Commissioner's Standing Orders*. The Adjudicator found that the *RCMP Regulations* contained provisions that set out a parallel process through which a medical discharge could be disputed. The Grievor submitted her grievance at Level II. The Grievor submitted that a decision by the Federal Court of Canada (FCC) in *Lebrasseur vs. Canada*, 2011 FC 1075, required her to deal with her concerns through the RCMP grievance process before raising those concerns in court.

ERC Findings: The ERC found that the Grievor did not have standing to grieve the issuance of the Notice of Intention. Longstanding ERC and RCMP jurisprudence indicate that interim steps in the medical discharge process are not grievable. In addition, the *RCMP Regulations* contain an administrative discharge process through which a member may seek redress. If a member is permitted to proceed with parallel processes which have as their foundation one set of facts, the likelihood of undue delay and multiple proceedings could render the system unworkable. It could also create abuses of process. The FCC's decision in *Lebrasseur* is inadmissible, for two reasons. First, the Grievor seemingly filed it as evidence to prove she had standing to raise this grievance rather than solely as an authority regarding the issue of standing. The Grievor would have known of the decision at Level I. Second, the decision did not address the issue of standing to present a grievance.

The Grievor's presentation of two grievances under one form was a procedural irregularity. The ERC disregarded the second grievance given that the Respondent did not request a preliminary ruling on it, the parties were not heard and the Level I Adjudicator did not address the second grievance. If the question of standing had been raised with respect to the second grievance, the ERC would have found that the Grievor did not have standing, for the same reasons provided above.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that the grievance be denied on the basis that the Grievor did not have standing under the *RCMP Act* to present the grievance.

G-604

In June 2008, the Grievor was issued a Notice of Transfer authorizing a cost transfer and advising that he would be relocated to another province. A few days later a relocation file was created for the Grievor. The Grievor's spouse and two dependents were relocating with him. Their home was listed for sale in either June or July of that year but it did not sell quickly.

The Grievor contacted a school official in the new province who highly recommended that his children start school on time in August in order to reduce any further credit losses due to transfer issues between provinces and to minimize the possibility of failure to graduate on time for the Grievor's eldest child. The Grievor booked a return flight for his spouse to travel for the purpose of finding interim accommodations for their children and registering them for school. The Grievor also booked one-way flights for his children. The Grievor did not book these flights through the government contracted travel service (GCTS) as, at the time, this was not a House Hunting Trip (HHT) or any other specified relocation situation.

In August 2008, the Grievor's home sold and he received authorization for an HHT. The Grievor's spouse was at the airport for her flight back when the Grievor advised her of the HHT approval and that he would be

joining her. She changed her flight, incurring a flight change charge, and began house-hunting.

The Grievor made a business case claiming exceptional circumstances and requesting payment from the *Core Envelope* of the air travel for his spouse and dependants. The Respondent denied the request on the basis that there were no exceptional circumstances to justify why the Grievor could not make the travel arrangements with the GCTS. The Grievor filed a grievance against this decision. During the early resolution phase, the Respondent contacted Treasury Board (TB). As a result of communications with TB, the Respondent felt that she did not have financial authority to approve reimbursement because that authority rests with Treasury Board, and because there were no provisions under the *Integrated Relocation Program* (*IRP*) for the Grievor's particular situation. The Level I Adjudicator denied the grievance on the merits on the basis that the Grievor had not demonstrated exceptional circumstances and the Respondent could not override the *IRP*.

ERC Findings: The ERC found that, as TB did not undertake an analysis of whether the Grievor's circumstances constituted exceptional circumstances for purposes of the *IRP*, it rendered no decision on this issue. As a result, this grievance is not moot.

At the time of the events giving rise to the grievance, the applicable *IRP* was the *2007 IRP*. In the spring of 2009, TB directed the Force to apply the *2008 IRP* retroactively to all relocation files created within a certain time frame, one of which was the Grievor's. Exceptionally and in light of TB's direction to the Force, the ERC reviewed the grievance pursuant to the provisions of the *2008 IRP*. It found that the Grievor's circumstances were exceptional and the expenses fell within the central intent of the *IRP*.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he allow the grievance.

G-605

In February 2008, the Grievor's son booked a March 2009 high school graduation trip to the Caribbean through a tour company. Each month, beginning in February 2008, the tour company automatically charged the Grievor's credit card with pre-authorized payments. However, in June 2008, the Grievor was issued a Notice of Transfer authorizing a cost transfer and advising that he would be relocated to another province with his family. As a result, the Grievor cancelled his son's trip. The tour company denied the Grievor's request for a refund according to its policy.

The Grievor submitted a claim for reimbursement of the trip cancellation expense pursuant to section 11.02 of the *Integrated Relocation Program 2008* (*2008 IRP*), *Sundry Accountable Incidental Relocation Expenses*. Royal LePage Relocation Services advised him that they did not have authority to approve the reimbursement. The Grievor's Relocation Advisor further advised the Grievor that, as the cancellation expense was not one of the permissible sundry expenses specifically identified in paragraph 11.02.3, his claim for reimbursement would require Treasury Board (TB) approval as an exceptional expense.

The Grievor submitted a business case claiming the trip cancellation expense as a sundry expense and requesting payment from the *Core Envelope*. The Respondent rendered a decision stating that she could not approve reimbursement from the *Core Envelope* as a sundry expense because the list of reimbursable sundry expenses contained in the paragraph was exhaustive. Trip cancellation expenses were not one of

the specified items. The cancellation expense was attributable but not critical to the relocation and, as such, was to be funded from the *Personalized Envelope*, subject to availability of funds. The Grievor filed a grievance against this decision and added that the expense should be reimbursed under the exceptional circumstances provision of the *IRP*. During the early resolution phase, the Respondent contacted Treasury Board (TB). As a result, TB denied the Grievor's expense under the *Core Envelope*. The Level I Adjudicator denied the grievance on the merits on the basis that section 11.02 of the *2008 IRP* contained an exhaustive list of the items to be reimbursed from the *Core Envelope* as sundry expenses. As the school trip cancellation expense was not listed, it could not be funded from the *Core Envelope*.

ERC Findings: The ERC found that, as TB did not undertake an analysis of whether the Grievor's circumstances constituted exceptional circumstances for purposes of the *IRP*, it rendered no decision on this issue. As a result, this grievance is not moot.

At the time of the events giving rise to the grievance, the applicable *IRP* was the *2007 IRP*. In the spring of 2009, TB directed the Force to apply the *2008 IRP* retroactively to all relocation files created within a certain time frame, one of which was the Grievor's. Exceptionally and in light of TB's direction to the Force, the ERC reviewed the grievance pursuant to the provisions of the *2008 IRP*. It found that the Grievor had not met his burden of persuasion that the expense of the cancellation of the trip was incurred in exceptional circumstances.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

G-606

The Grievor served at an isolated post with an "Environmental Allowance" (EA) classification of "3". He submitted a claim for Vacation Travel Assistance (VTA), which the Respondent's office received on April 14, 2010. The Respondent processed and paid the Grievor's VTA claim at a rate published by the Treasury Board Secretariat (TBS) on April 1, 2010. The Grievor felt his claim was payable at a higher rate published by the TBS in May 2009. The Respondent did not agree, stressing that the higher rate had been replaced by the rate published on April 1, 2010.

The Grievor filed a grievance which was denied at Level I and resubmitted at Level II. Both parties referred to paragraph 3.5.7 of the *Isolated Posts and Government Housing Directive* (*Directive*). Paragraph 3.5.7 provides:

> *3.5.7 The Treasury Board Secretariat will publish the amount of the fixed rate VTA for each isolated post in the spring each year on a date agreed to by the NJC IPGHC. In addition, for those isolated posts with an EA classification of 4 or 5, the fixed rate VTA will also be published in the fall each year on a date agreed to by the NJC IPGHC.*
>
> *TBS will notify departments of the rates.*
>
> *Note:*
>
> *For locations with an EA of 1, 2 or 3, the rate will apply for a 12-month period from the date it is published. For locations with an EA of 4 or 5, the rate will be in effect for a 6-month period until the next rate is published.*

The Grievor argued that the *Note* to paragraph 3.5.7 should be read strictly. He alleged that his claim was payable at the May 2009 rates as it was received fewer than 12 months after the May 2009 rates took effect. He further felt the *Directive* was

applied inconsistently over consecutive years. The Respondent filed a Level II reply submission after the administrative deadline for so doing had expired. She restated her Level I position by alleging that paragraph 3.5.7 should be read jointly with certain guidance documents. She also repeated that the Force had followed those guidance documents, as well as RCMP past practices, by processing the Grievor's VTA claim at the April 1, 2010 VTA rate. The Grievor objected to the Respondent's late submission.

ERC Findings: The ERC found that, although the Commissioner of the RCMP should have the flexibility to retroactively extend an administrative limitation period, no such extension was required. The Respondent's late Level II submission only reiterated her Level I position and added no substantive arguments or reasoning. As a result, the Commissioner could address the grievance without reliance on the Respondent's Level II submission.

Turning to the merits, the ERC found that it was unreasonable to apply the *Note* strictly and that the Respondent's position was consistent with relevant authorities and past RCMP practices.

The inclusion of the *Note* in the *Directive* was not meant to create rigid effective periods for VTA rates. Rather, the *Note* was meant to highlight the distinction between annual and semi-annual rates. A *Note* is an explanatory feature, usually drafted in plain language to provide information regarding the practical application of a provision. The *Note* does not override the words in the body of paragraph 3.5.7, which refer only to the creation of annual and semi-annual VTA rates.

The lack of rigour in the drafting of the *Note* supports the interpretation that the *Note* was meant to be descriptive only. For example, the sentences in the *Note* are inconsistent with each other, which means applying the *Note* strictly could lead to annual and semi-annual VTA rates expiring on different bases. The interpretation is also supported by the *Directive's* guidance documents, which reveal that a VTA rate shall apply until the TBS publishes a new rate and that, on April 1, 2010, the prior applicable VTA rate became inoperative and a new VTA rate came into effect.

The ERC dismissed the notion that the *Directive* was applied inconsistently over consecutive years. The TBS published new VTA rates on different dates in fiscal years 2009-2010 and 2010-2011. As a result, the Force applied the new VTA rates as of those different dates in each of the two fiscal years. The discrepancy may have led to some members receiving less VTA than they anticipated in consecutive years. However, this result was outside of the Force's control and was not a result of an inconsistent practice or interpretation of the *Directive*.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

G-607

In late 2010, the Grievor and her superiors finalized interrelated documents that established the basis for her medical discharge from the RCMP (Discharge Documents), which was to occur on January 9, 2013. The Discharge Documents contained a number of negotiated terms. Among them were that the discharge had been sought and supported in light of the Grievor's disability and that the Grievor released the RCMP from any grievances relating to the parties' agreement.

The Respondent sent the Grievor a Notice of Discharge (Notice), which the Grievor received on September 25, 2012. The Notice made references to the parties' agreement

and reiterated that the Grievor's date of discharge was January 9, 2013. The Notice further stated that, pursuant to subsection 22(a) of the *RCMP Regulations*, the discharge was "*subject to a grievance*". The Grievor later expressed concerns that she signed the Discharge Documents while under duress and that the RCMP had not met certain obligations under the Discharge Documents and at law.

On October 5, 2012, the Grievor grieved the decision to discharge her. The Respondent argued that the grievance was filed outside the 30-day statutory limitation period. The issue of timeliness was referred to a Level I Adjudicator. Two days after receiving the grievance, the Level I Adjudicator issued a decision in which he denied the grievance on the basis that it was untimely. The Adjudicator advised the Case Manager that: "*I assumed a decision on this was required asap*". At Level II, the Grievor argued that the Level I Adjudicator lacked jurisdiction to make a decision and that the grievance was timely. The Grievor also submitted that the grievance process was procedurally unfair and that the Adjudicator should have disclosed various materials relating to the drafting of his decision.

ERC Findings: The ERC found that the Level I Adjudicator assumed his role in a manner that was consistent with applicable authorities and had jurisdiction to make his decision. The RCMP Grievance Policy provided that adjudicator designations were coordinated by the Professional Standards Unit on case-by-case bases. The record reveals this is what happened in this case.

The ERC found that the grievance was not initiated within the statutory 30-day Level I time limit. The disputed decision was made and communicated to the Grievor by October 2010, when the Discharge Documents were completed. Those documents reflected, on their face, the decision to discharge the Grievor and the Grievor's agreement to the discharge. The Notice the Grievor received in 2012 was not a new decision as it was based on and issued pursuant to the set of facts agreed by the parties in October 2010. The Respondent's compliance with subsection 22(a) of the *RCMP Regulations* was neither a waiver of the release provision in the Discharge Documents nor a new, grievable decision. The ERC dismissed the Grievor's other timeliness arguments on the bases that they were unsupported and/or unrelated to the timeliness issue.

The ERC also found that the grievance process was procedurally fair. There was no evidence of bias or favouritism on the part of the Case Manager. The materials the Grievor sought from the Level I Adjudicator were not subject to disclosure pursuant to subsection 31(4) of the *Act* and would not have been disclosable if they did exist and were in the possession of the Level I Adjudicator. The Level I decision was indeed issued promptly and contained unfortunate errors. However, the record divulged several reasons why an informed person who viewed the matter realistically and practically would not find there was a likelihood of bias on the Level I Adjudicator's part. Lastly, the Adjudicator did not make assumptions or omissions which prejudiced the Grievor.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

G-608

The Grievor retired from the RCMP on April 3, 2007. He indicated that he wished to make a retirement relocation from the Vancouver area to Nova Scotia. The RCMP agreed that the Grievor was eligible for the retirement relocation, within the period set out in section 14.01.4 of the 2007 RCMP *Integrated*

Relocation Program (*2007 IRP*). Section 14.01.4 of the *2007 IRP* stipulated:

> *Retirement relocation provisions under Section 79(1),* RCMP Regulations *are available only for 2 years after the date on which a member is discharged. The Departmental National Coordinator may approve a 1-year extension when exceptional circumstances exist beyond the member's control. No additional request for extension will be accepted beyond the third year. Note: Only exceptional circumstances relating to serious medical condition involving a member and/or dependents will be considered.*

Shortly after the Grievor's retirement, his spouse developed medical issues that were suggestive of cancer. This necessitated a multi-year period of cancer testing which she preferred to undergo in the Vancouver area. The Grievor sought and received a one-year extension of the retirement relocation period, in light of exceptional medical circumstances. In 2009, after doctors indicated that the Grievor's spouse's tests had not revealed cancer, the Grievor began looking for a property in Nova Scotia. In March 2010, he was diagnosed with skin cancer. He asked for an extension of the retirement relocation period, beyond three-years of his date of retirement, so he could be treated in the Vancouver area. The Respondent refused, explaining that section 14.01.4 of the *2007 IRP* prohibited such an extension. The Grievor recovered, then paid to move his family to Nova Scotia. Sadly, his spouse later died of complications arising from lymphoma and pneumonia.

The Grievor submitted a Level I grievance. During the early resolution phase, the Respondent attempted, without success, to have the Treasury Board Secretariat (TBS) further extend the Grievor's retirement relocation period. The Grievor subsequently questioned the quality of the Respondent's attempt. The Level I Adjudicator denied the grievance on the merits.

ERC Findings: The ERC found that the interactions between the Respondent and the TBS were outside the scope of the grievance. Regarding the merits of the grievance, the ERC found that section 14.01.4 of the *2007 IRP* applied to the grievance and, despite an omission or typographical error, the Respondent clearly based his decision on that provision. Section 14.01.4 of the *2007 IRP* unambiguously prohibited the Respondent from extending the Grievor's retirement relocation period to a date beyond the three year anniversary of the Grievor's retirement date. In addition, the *2007 IRP* did not require the Respondent to provide a business case to the TBS before making a decision. The Grievor failed to explain or show how the authorities upon which he relied supported his position.

The Grievor's circumstances are tragic. He and his family undoubtedly experienced serious upheaval following the Grievor's retirement from the RCMP. It is open to the Commissioner to consider examining the Grievor's eligibility to receive a grant to cover verifiable retirement relocation expenses from the RCMP Benefit Trust Fund, in lieu of an extension of the retirement relocation period.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

G-609

The Grievor received no-cost transfers in 2005 and 2006. In 2010, the Force initiated the Retroactive Corrective Payment of Relocation Benefits project (Project) to correct previous inconsistent interpretations and applications of the 40 kilometre rule contained in the Force's *Integrated Relocation Program* (*IRP*) policies. Under this Project, two of the Grievor's transfers were re-assessed. In separate decisions issued in April 2012 and August 2012, the Project team notified the

Grievor of the benefits he would receive for his 2006 and for his 2005 transfer. Both times he was advised that he was not eligible for a transfer allowance.

The Grievor responded to the first decision on August 16, 2012. He responded to the second decision on September 24, 2012, asking the Project team for clarification regarding his ineligibility for a transfer allowance. In October 2012, the Grievor signed off on the accuracy of his eligible benefits. On November 4 and 5, 2012, the Grievor requested reconsiderations of the transfer allowance decisions. At no time did he provide any new information for consideration. After the Grievor received his benefits, the Project team issued two separate emails on November 14, 2012 confirming that the previous decisions were final. The Grievor again requested reconsiderations on December 6, 2012. On December 12, 2012, the Project team reiterated that the decisions were final. On January 10, 2013, the Grievor presented a grievance against the December 12, 2012 communication. The Respondent challenged the timeliness of the Grievor's presentation.

The Grievor acknowledged having received earlier correspondence that made him aware of the Project team's initial position, but argued that the earlier communications were part of an ongoing exchange of correspondence in which he was seeking clarification of the Project team's conclusions as he believed their interpretation of the *IRP* was mistaken. He argued that the limitation period did not begin to run until December 12, 2012 because that is when he realized he was aggrieved. He also argued that any delay in presenting the grievance was caused by the Project team's refusal to respond in any meaningful way to his requests for clarification of the initial decisions.

The Level I Adjudicator denied the grievance on the basis that it was not presented in time. The Level I Adjudicator also found that there were no grounds for retroactively extending the time limit.

ERC Findings: The ERC agreed with the Level I Adjudicator that the grievance was not presented in time. The ERC found that the Grievor knew or ought to have known he was aggrieved well over 30 days prior to the date he filed his grievance. The fact that the Grievor was contesting the decisions informally did not impact the limitation period for the presentation of his grievance.

The ERC also agreed that there was no justification to recommend that the Commissioner retroactively extend the Level I time limit. The ERC disagreed with the Grievor's contention that the Project team contributed to his delay in grieving as the Project team had responded reasonably promptly to his inquiries. His first request for clarification and detailed challenges were not made until well after the thirty-day time limits had expired for each of the decisions and there were also a number of unexplained delays on the Grievor's part.

ERC Recommendation: The ERC recommends that the Commissioner of the RCMP deny the grievance on the basis that it was not presented at Level I in time.

G-610

The Grievor performed relief work in the North prior to December 2011. He did not ask for a Private Accommodation Allowance (PAA) at that time because he was "*told that it didn't apply back then*". In 2014, the Commissioner released a Communication (2014 Communication) that was ultimately incorporated into the *RCMP Travel Directive* (*Directive*). The 2014 Communication was not in the record. However, the parties agreed it provided that, retroactive to

December 2011, certain members would receive a PAA if they satisfied various criteria.

The Grievor requested a retroactive PAA for the period during which he performed relief work in the North in 2011, in reliance on the 2014 Communication. The Grievor contended and the Respondent did not disagree that, on June 17, 2014, the Grievor became aware his request was denied because his relief work pre-dated the eligibility period of the 2014 Communication.

The Grievor submitted a Level I grievance on July 11, 2014. Shortly thereafter, the Respondent raised an objection on the basis that the grievance was filed after the statutory thirty-day limitation period had expired. The Level I Adjudicator denied the grievance on the ground that it was out of time. She found that the Grievor was informed in 2011 that he would not receive a PAA but he did not present a grievance until 2014, years after the limitation period for so doing had expired.

ERC Findings: The ERC disagreed with the Level I Adjudicator and found that the Grievor met the statutory 30-day limitation period at Level I. The Grievor's eligibility to receive a PAA based on the criteria in effect in 2011 is not at issue. The fact that he did not file a grievance in 2011 is irrelevant. On his grievance form and in subsequent submissions, the Grievor contested the Force's decision to deny his request for a retroactive PAA pursuant to the 2014 Communication. He did not dispute a decision of the Force in 2011 regarding a PAA. The Grievor stated, and the Respondent did not disagree, that the Grievor filed a claim for a retroactive PAA pursuant to the 2014 Communication, the RCMP denied the claim on the basis that the Grievor failed to satisfy an eligibility requirement of the 2014 Communication, the Grievor became aware of the denial on June 17, 2014, and the Grievor submitted a grievance fewer than thirty days later on July 11, 2014. The Force decision relevant to this grievance was its June 17, 2014 denial of the Grievor's retroactive PAA request.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he allow the grievance on the basis that the Grievor met the preliminary requirement of timeliness. It further recommends that the grievance be returned to Level I to proceed on the merits.

Update

The Commissioner of the RCMP has provided his decision in the following matters, summarized in previous issues of the *Communiqué*:

Former Legislation Cases:

D-126 (*summarized in the November 2014 - February 2015* Communiqué) The Appellant was alleged to have engaged in sexual activity while on duty and to have knowingly and wilfully made a false and misleading statement to a superior officer regarding the sexual encounter. However, the Allegations were drafted in a way which lacked clarity. The Appellant admitted Allegation #1 and the parties presented a joint submission on sanction for a reprimand, a recommendation for counselling, and a forfeiture of 10 days' pay. The Board directed that the Appellant resign within 14 days, in default of which he would be dismissed. The Appellant appealed the Board's decision on the merits primarily on the basis of breaches of procedural fairness. He appealed the sanction decision primarily on the basis that the Board erred in rejecting the parties' joint submission on sanction. The ERC recommended that the Commissioner of the RCMP allow the appeal on the merits and

order a new hearing due to a serious breach of the Appellant's rights to procedural fairness and a fair hearing. In the event that the Commissioner disagrees with the recommendation for a new hearing, the ERC recommended that the Commissioner find that the Adjudication Board erred in its decision on sanction, allow the appeal on sanction and impose the sanction jointly submitted by the parties, namely a reprimand, a recommendation for professional counselling (if still pertinent) and a forfeiture of ten (10) days' pay.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

In a decision dated September 11, 2015, Commissioner Robert W. Paulson found that the Board breached the Appellant's right to procedural fairness and a fair hearing prejudiced. As a result, the Board's decision is invalid.

Although a finding of a breach of procedural fairness would usually result in the matter being returned to a different adjudication board for a new hearing, the Commissioner concluded that the circumstances would inevitably lead to the same result on the merits of Allegation 1. The Commissioner exercised his authority under s. 45.16(2)(c) of the Act and found that the Appellant's actions contravened s. 39(1) of the Code of Conduct and were disgraceful and brought discredit on the Force.

The Commissioner rejected the joint sanction submission on the basis that it was unfit and that accepting it would be contrary to the public interest. The Commissioner ordered the Appellant to resign, and in default of resigning within 14 days of being served with the decision, to be dismissed.

The Commissioner agreed with the ERC that the Appellant had not provided a factual foundation to establish a Charter breach and that this ground of appeal was without merit.

G-555 (*summarized in the April-June 2013* Communiqué) The Grievor submitted a request to his immediate superior for leave without pay (LWOP) so he could take part in a foreign mission. The immediate superior denied the request. The Grievor subsequently informed the Commanding Officer (Respondent) several times that he wished to discuss his denied request. Under the applicable policy, only the Respondent could approve LWOP. Having been unable to meet with the Respondent, the Grievor decided to retire so he could take part in the mission. The Grievor challenged the refusal to approve LWOP. The ERC recommended that the Commissioner of the RCMP allow the grievance and apologize to the Grievor for the manner in which his LWOP request was handled. The ERC also recommended that the Commissioner order a review of the RCMP's leave policy to determine whether it could be amended to clarify the LWOP request process.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

[TRANSLATION]

The Commissioner allowed the grievance to the extent that the Grievor's superiors should have immediately referred his LWOP application to the Respondent. The Commissioner rejected the Grievor's argument that he was the victim of discriminatory treatment, harassment or abuse of authority or forced to retire from the RCMP. Consequently, the redress sought is denied.

G-564 (*summarized in the January-October 2014* Communiqué)

The Grievor performed operational police duties. He suffered two sudden blackouts, and was placed on anti-seizure medication. RCMP Health Services decided to amend the Occupation Fitness designation on the Grievor's medical profile from O2 (which permitted a member to carry out operational duties) to O4 (which did not). The Grievor disagreed with RCMP Health Services' decision and filed a grievance. The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that this grievance is not referable to the ERC. As a result, the ERC did not have the legal authority to further review the matter or make a recommendation.

Commissioner of the RCMP Decision: The Commissioner agreed that the grievance was not referable to the ERC and sent the grievance to the appropriate Level II decision maker.

G-565 (*summarized in the January-October 2014* Communiqué)

The Grievor served at a two-member isolated post. After changes to backup practices at the detachment, the Grievor requested to be retroactively compensated at a higher level for previous standby pay. The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that this grievance is not referable to the ERC. As a result, the ERC did not have the legal authority to further review the matter or make a recommendation.

Commissioner of the RCMP Decision: The Commissioner agreed that the grievance was not referable to the ERC and sent the grievance to the appropriate Level II decision maker.

G-566 (*summarized in the January-October 2014* Communiqué)

The Grievor's supervisor temporarily assigned the Grievor to a differently classified position, promising that he would receive acting pay. The Grievor believed that the new position paid considerably more than his substantive position, and expected to receive acting pay. Compensation Services advised him that this was not the case. The Grievor presented a grievance because he felt that the decisions made and the explanations provided by Compensation Services were contrary to policy. The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that this grievance is not referable to the ERC. As a result, the ERC did not have the legal authority to further review the matter or make a recommendation.

Commissioner of the RCMP Decision: The Commissioner agreed that the grievance was not referable to the ERC and sent the grievance to the appropriate Level II decision maker.

G-567 (*summarized in the January-October 2014* Communiqué)

While planning his retirement from the RCMP after roughly 20 years of service, the Grievor learned that his years of prior service in the Canadian military would not count in the calculation of his severance pay. This was so as he had already received a severance pay upon leaving the military. The Grievor grieved this decision. The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that this grievance is not referable to the ERC. As a result, the ERC did not have the legal authority to further review the matter or make a recommendation.

Commissioner of the RCMP Decision: The Commissioner agreed that the grievance was not referable to the ERC and sent the grievance to the appropriate Level II decision maker.

G-569

(*summarized in the November 2014 - February 2015* Communiqué) The Grievor filed an expense claim for a meal eaten pursuant to the *Treasury Board Travel Directive*. The Respondent denied the claim and asked her to provide supporting documentation, which she refused to do. The Grievor filed the same claim for the second time more than a year after the initial denial. The Respondent reiterated his denial. The Grievor grieved the decision. The Respondent argued that he had denied the claim already more than a year ago. The Grievor was of the opinion that the second constituted a new decision. The ERC found that the second denial did not constitute a new decision, as the Grievor had not submitted any new information to the Respondent that would have enabled him to review his decision. The ERC recommended that the Commissioner of the RCMP deny the grievance.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

[TRANSLATION]

The Commissioner denied the grievance because the Grievor, who was contesting the refusal to reimburse her for a meal, did not file her grievance within the time limit prescribed by the Act.

G-572 to G-592

(*summarized in the November 2014 - February 2015* Communiqué) The Grievor regularly worked evening shifts outside of his headquarters area. He asked that his mid-shift meals while on travel status be reimbursed at the dinner rate. The Respondents denied his claim on the grounds that the Grievor was entitled to be reimbursed for his meals at the lunch rate under section 3.2.9 of the *Treasury Board Travel Directive* (*TBTD*). The ERC found that the *TBTD* clearly indicated that shift workers should be reimbursed based on the meal sequence of breakfast, lunch and dinner, regardless of the shift's commencement. The ERC recommended that the Commissioner of the RCMP deny the grievances.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

[TRANSLATION]

The Commissioner denied the 21 grievances because the Grievor, who was contesting a number of refusals to reimburse him for meals at the dinner rate, was not eligible.

G-593

(*summarized in the November 2014 - February 2015* Communiqué) The Grievor regularly worked evening shifts outside of his headquarters area. While on travel status, the Grievor requested and obtained a reimbursement for his mid-shift meals at the lunch rate. However, in light of new information, he asked that the meals for which he was already reimbursed at the lunch rate be reimbursed at the dinner rate. The Respondent denied the claim. The ERC concluded that, when the Grievor claimed two meals eaten during the same shift exceeding 10 hours, he was entitled to be reimbursed for the second meal at the dinner rate based on the meal sequence established by the *Treasury Board Travel Directive* (*TBTD*). The ERC recommended that the Commissioner of the RCMP partially uphold the grievance.

Commissioner of the RCMP Decision: The Commissioner's decision, as summarized by his office, is as follows:

[TRANSLATION]

In keeping with the ERC's recommendation, the Commissioner allowed the grievance in part, because the Grievor, who was contesting a number of refusals to reimburse him for meals at the dinner rate, is partially eligible. Thus, for shifts of over 10 hours where the Grievor claims two meals, he is entitled to have his second meal reimbursed at the dinner rate.

G-598 (*summarized in the November 2014 - February 2015* Communiqué) The RCMP civilianized all of its Air Services positions. Regular members who served in Air Services, including the Grievor, were permitted to retain their positions at their existing ranks, on certain conditions. Specifically, the members would "*be frozen in* [their] *rank and location*" and would receive no additional pay unless their newly-civilianized positions had higher pay scales than their existing ranks. A number of years later, the Grievor learned that an Air Services section in a different region of Canada continued to pay unauthorized acting pay to similarly-situated members. He asked for retroactive compensation. The Respondent refused the request. The Grievor filed a grievance. This grievance is not referable to the ERC. As a result, the ERC did not have the legal authority to further review the matter or to make a recommendation.

Commissioner of the RCMP Decision: The Commissioner agreed that the grievance was not referable to the ERC and sent the grievance to the appropriate Level II decision maker.

QUICK REFERENCE INDEX (1998 to date)