



Royal Canadian Mounted Police External Review Committee

Recommendations of the Committee for the period October to December 2001

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D-75 An adjudication board found that it did not have jurisdiction to hear three allegations of misconduct formulated against a member, because the disciplinary proceedings had not been initiated within the one-year period indicated by s. 43(8) of the *RCMP Act*. The Commanding Officer appealed the decision.

The Appellant argued that the A/Commr. had not acquired knowledge more than one year before the proceedings were initiated. Specifically, having found that the evidence of one S/Sgt. could only be given "equal weight" to the s. 43(9) certificate, the Board failed to conclude that the evidence established that the A/Commr. learned of the alleged misconduct prior to the date on the certificate.

The Respondent first challenged the Appellant's right to appeal the adjudication board's decision. The Respondent also submitted that the appeal was not submitted within the time limit permitted by s. 45.14(4) because the appeal submissions were filed by electronic mail only, while a copy of those submissions sent by mail was not delivered until after the deadline. The Respondent's view was that the adjudication board erred in not finding that someone who learns about the alleged misconduct while not in the A/Commr. but who then sits in that chair, triggers the start of the one-year time frame for initiating disciplinary action.

In an interlocutory ruling, the Committee concluded the Appellant had the right to appeal because the decision of the adjudication board amounts to a "dismissal of an allegation" pursuant to s. 45.14(2). As for the timeliness of the appeal, the Committee concluded that the *RCMP Act* does not preclude the use of electronic mail as the method of filing appeal submissions.

The Committee concluded that when a s. 43(9) certificate is not contradicted by any other evidence, the adjudication board has the right to rely on that certificate as the basis for concluding that the proceeding was initiated within the time specified in s. 43(8). However, where evidence to the contrary is introduced, as was the case here, the burden falls upon the Appellant, as the party that initiated the proceeding, to demonstrate that, on a balance of probabilities, the information relied upon to prepare the certificate was factually correct. The Committee concluded that the Appellant had failed to discharge the evidentiary burden before the adjudication board.



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The Committee indicated that the s. 43(9) certificate would have been sufficient to establish the date on which the Appellant became aware of the Respondent's alleged misconduct but for the fact that there was evidence before the adjudication board that contradicted the certificate. The Committee concluded that for the purpose of s. 43(9), what may be regarded as "evidence to the contrary" is any credible evidence that the Appropriate Officer learned of the alleged misconduct on an earlier date than that indicated by the certificate, whether or not such contrary evidence is considered to be of higher probative value than the certificate. The Committee noted that the evidence did succeed in establishing that at least four other members in the chain of command had acquired detailed information about the matter by the end of May 1999.

The Committee recommended that the appeal be dismissed.

Commissioner's Decision

On December 12, 2001, the Commissioner thoroughly reviewed this matter and made the decision to dismiss the Appropriate Officer's appeal. He agreed with the Committee that one S/Sgt.'s testimony amounted to contrary evidence which succeeded in displacing the legal presumption created by the certificate issued pursuant to s. 43(9) of the RCMP Act. The Commissioner expressed his concerns about the delays in this case, noting in particular that the Appropriate Officer did not initiate disciplinary proceedings until August 2, 2000—nearly a full year after the criminal charges had been laid and almost eighteen months after the incident first became the subject of a public complaint. He acknowledged that delays do occur in administrative proceedings but had difficulty comprehending why disciplinary action could not have been initiated in compliance with the RCMP Act.

G-263 In 1996, the Grievor qualified for promotion to the rank of corporal. In 1998, a corporal's position was identified in a detachment located 550 kilometres from the Grievor's house. The Grievor agreed to the transfer and was expected to arrive at the new detachment three months after the effective date of the transfer. However, because the Grievor was not able to sell his house, at a price which he considered reasonable, he asked for and was granted some extensions of his transfer implementation date. In the meantime, the Grievor applied for Temporary Dual Residence Assistance (TDRA), which is made available to members when two residences are temporarily maintained during the initial stages of a relocation, but his application was rejected. The Grievor grieved that decision.

The Grievance Advisory Board ("GAB") recommended that the grievance be denied, saying that the Grievor had relocated based on his own decision as he was not ordered to do so.

The Level I adjudicator denied the grievance on the basis that it was the Grievor's decision not to accept the price offered under the Guaranteed Home Sale Plan, which created the situation in which he found himself.

The Committee recommended that the grievance be denied. It noted that whether there was an operational requirement or not was not the most important question to consider, although it was quite clear that the Grievor had been told that his move was urgent. However, the Committee said that the Level I adjudicator was right in pointing out that the Grievor himself was responsible for the fact he was faced with having to maintain two residences. The Committee indicated that the purpose of TDRA was not to protect RCMP members from fluctuations in real estate market prices, but rather to address circumstances where it is not reasonable to expect the member and his family to arrive at the new post at the same time.

The Committee noted that it would not be fair to conclude that the Grievor's promotional transfer placed him in a situation where he was necessarily going to lose a significant amount of money. He could have managed this situation in a manner that would not have resulted in any financial loss for him. The Committee concluded the one-month of TDRA which the Grievor received was fair and reasonable and that granting TDRA for a longer period would not be warranted.

Commissioner's Decision

After careful review of the file, the Commissioner agreed with the recommendations of the Chair of the Committee and the reasons provided. Therefore the grievance is denied.

G-264 In 1994, the Grievor was seriously injured in a motor vehicle accident while on duty. In 1996, the Grievor's physician recommended that he use a hot tub on an ongoing basis as part of his rehabilitation. The Force agreed to pay the cost of installing the hot tub at the Grievor's home. In 1999, the Grievor requested that the Force pay for expenses that he had incurred in order to be able to use the hot tub at his home. This request for denied.

The Grievance Advisory Board ("GAB") recommended that the grievance be denied, saying that the Force medical benefits package does not contain any provision allowing for the payment and installation of a hot tub in member's home and because it considered that the Force did not have the financial authority to pay expenses of this nature.

The Level I adjudicator agreed with the GAB's rationale and denied the grievance.

The Committee first determined that the grievance was referable, as part of the category described by paragraph 36(a) of the *Regulations*, as it could be seen as pertaining to some extent to the application of health and safety policy established by Treasury Board for all government departments,

including the Force. That policy requires that the Force establish and maintain effective occupational safety and health (OSH) programs consistent with Treasury Board policies, standards and procedures.

On the merits of the grievance, the Committee recommended that the grievance be denied. The Committee concluded that, while the Grievor was not using his hot tub for his personal enjoyment but rather for the purpose of accelerating his recovery from the injuries, he had no entitlement to the Force paying for the cost and installation of the hot tub or for associated maintenance costs. The fact that the Force had agreed to pay for the hot tub did not create an obligation upon the Force to pay for costs associated with it.

The Committee noted the Grievor's concern in relation to the length of time required to review the grievance but indicated that it appeared that the delay was attributable to the fact that the composition of the GAB had to be changed.

Commissioner's Decision

The Commissioner agreed that the grievance be denied for the reasons stated by the External Review Committee.

G-265 In June 1997, the Grievor was assigned to a hotel, 25 miles east of his detachment, in order to assist in providing security for a visiting foreign dignitary. The Grievor purchased dinner from the hotel's room service at a cost of \$42.28 and then submitted a claim for the full amount that he had spent. He was informed that he would only be reimbursed for \$25.00, which at the time, was the standard maximum allowance for dinner as per the Treasury Board *Travel Directive*. The Grievor grieved that decision. His principal argument was that he had been compelled to purchase his meal from the hotel's room service because the nature of the security operation in which he was involved prevented him from leaving the hotel room to which he had been assigned.

The Grievance Advisory Board (“GAB”) recommended that the Grievor be paid in full cost of his meal except for an amount of \$7.00 for a pot of coffee, without interest. The GAB’s position was that the Grievor should have been told ahead of time that there were local establishments which delivered meals to the hotel.

The Level I adjudicator denied the grievance and indicated that the fact that other members had not exceeded the maximum allowed demonstrated that the Grievor could have stayed within that limit as well.

The Committee recommended that the grievance be allowed. The Committee considered that there was nothing extravagant about the meal that the Grievor took at the hotel and although it was suggested that he could have had a less expensive meal, it is not clear that he would have been able to eat anything other than hamburger, pizza or fried chicken if he had spent less than the maximum allowed. The Committee considered that the Grievor’s situation was unique as he was required to eat dinner at the hotel room where he was performing his securities duties. Also, it was not reasonable to expect the Grievor to order hamburger and fries just so as not to exceed the maximum allowance for dinner, especially given his health condition. Treasury Board *Travel Directive* provides that there are exceptions to the rule that meal claims must not exceed the amount established; in some exceptional cases which result directly from the employee’s duties, a higher priced meal may be reimbursed. As for the interest claimed by the Grievor, the Committee concluded that there is no government policy that would allow him to be paid interest.

Commissioner’s Decision

On November 17, 2001, after careful review of this grievance, the Commissioner has decided to support the findings and recommendations of the Committee. His main reason for supporting the Committee’s recommendation is the existence of the member’s medical condition; otherwise he would not have supported the grievance.

Decisions of the Commissioner for the period October to December 2001

D-74 The member appealed the decision, as well as the sanction that was imposed, of an adjudication board which concluded that he had contravened the *Code of Conduct* on three occasions.

The member’s representative presented nineteen grounds of appeal, including arguments about a motion that had been made to the Board to stay the proceedings. Other issues related to the findings of the Board, its conclusions on sanction and the fairness of the hearing itself.

The Committee recommended that the appeal against the finding that three contraventions of the RCMP’s *Code of Conduct* were established should be dismissed. The Committee recommended that the appeal against the decision on sanction should be allowed. For each of allegations 1 and 3, a reprimand should be imposed. In the case of allegation 2, a forfeiture of pay for 10 days as well as a reprimand should be imposed.

Commissioner’s Decision

On December 12, 2001, after careful consideration, the Commissioner agreed with the recommendation of the External Review Committee to dismiss the appeal on the allegations of misconduct. The Commissioner agreed with the Board and the Committee that the allegations had been established.

As for the appeal on the sanction imposed by the adjudication board, the Commissioner agreed with the Committee's recommendation that the appeal should be upheld and that the sanction should be varied. The Commissioner found that discharge from the Force was not appropriate in this case; however, he disagreed with the Committee as to the appropriateness of demotion. The Commissioner found Sgt. [member]'s conduct totally unacceptable for a member of the RCMP and stated that it is to be condemned in the strongest possible terms. He referred to the Committee's comments regarding the disciplinary sanction of demotion in their report 2900-98-001 [33 AD (2d) 122] and stated that when the test referred to was applied to the conduct in this case, particularly with regard to allegation number two, the sanction of demotion was justified. Pursuant to s. 45.16(3)(b) and 45.12(4) of the Act, the following sanctions were imposed: allegation 1, forfeiture of five days' pay and a reprimand; allegation 2, demotion to the rank of corporal, a recommendation for transfer and a recommendation for professional counselling; allegation 3, forfeiture of five days' pay. The Commissioner pointed out that the recommendations for transfer and counselling were intended to ensure that the member is posted to appropriate duties at a location where he can address his personal problems.

G-261 The Grievor submitted a grievance against a Notice of Medical Discharge. The Medical Board concluded that the Grievor suffered from a chronic physical condition, and that he had little chance of improvement in the near future. Accordingly, discharge was ordered.

The Grievor submitted his grievance without, however, presenting any supporting grounds. The Grievor then filed a Level II grievance and requested that the RCMP appoint him a lawyer. The request was denied because the policy relating to the provision of legal assistance did not apply to the grievance process. The Grievor was asked to provide his own representation. No arguments were submitted.

The Committee informed the Grievor that the RCMP gives members who are the subject of a Notice of Medical Discharge the right to legal assistance, a duty that can be taken on by the members' representatives, who are lawyers paid by the RCMP. However, the Grievor never took advantage of his right and never presented arguments to support his grievance. Consequently, the Committee recommended that the grievance be denied.

Commissioner's Decision

The Commissioner agreed with the conclusions and recommendations of the External Review Committee. The Grievor did not provide any grounds to support his grievance and the Commissioner concluded that the grievance should be dismissed and that the Grievor be discharged from the Royal Canadian Mounted Police. The Commissioner maintained that the Grievor was not advised of his right to request a members' representative for the presentation of his grievance and that, in similar situations, the members should be provided with this information. He finally indicated that he would request the Chief Human Resources Officer to address this question.

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