



RCMP External Review Committee

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Findings and Recommendations

Between June and August 2016, the RCMP External Review Committee (ERC) issued the following findings and recommendations:

Current Legislation Cases:

C-012 Conduct Authority Decision

In July 2014, the Appellant and other members arrested two individuals (GS and JO) for drug trafficking. A search was also done of their residence. An amount of money was seized from each of GS and JO. Both amounts were turned over to the Appellant as the designated exhibit person on that investigation. In May 2015, GS attended the detachment to request that her seized money be returned to her. The Force was not able to locate her money. When the Appellant was questioned, he could not shed further light on the missing exhibits, despite his notes indicating that these amounts were turned over to him. A *Code of Conduct* investigation was undertaken into the Appellant for failing to properly handle and account for money coming into his possession. The Conduct Authority (CA) found the allegation established and imposed a reprimand and seven (7) days forfeiture of pay. The Appellant appealed solely the conduct measures imposed.

The Appellant alleged that the CA's decision contravened the principles of procedural fairness as it gave no reasons for the chosen conduct measures. The Appellant also submitted that the conduct measures imposed contravened the principles of parity of sanctions and did not meet the principles set out in the *Conduct Measures Guide*.

ERC Findings: The ERC found that the requirement for written reasons applies in the Force's conduct cases and extends not only to reasons for finding one or more allegations have been established but also to reasons supporting the imposition of the particular conduct measure. As the Respondent had given no reason in support of the conduct measures imposed, the ERC found that it was a breach of procedural fairness. Contrary to the Appellant's assertion, the ERC found there was no undue delay in imposing discipline on the Appellant as the starting point for considering delay is when an employer is made aware of the employee's conduct not when the breach was committed.



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The ERC found that the Respondent did not follow the three-part test set forth in the Force's *Conduct Policy* and the *Guide* when he imposed conduct measures on the Appellant. As the Respondent provided no reasons, the Commissioner owes no deference to the Respondent's imposition of conduct measures and can make his own assessment of conduct measures.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he allow the appeal in respect of the conduct measures imposed on the Appellant by the Respondent. The ERC also recommends to the Commissioner that he impose on the Appellant a written reprimand in respect of the Allegation and the Appellant's conduct in failing to properly handle and account for money coming into his possession in the performance of his duties, contrary to Section 4.4 of the *Code of Conduct*.

C-013 Conduct Authority Decision

The Appellant had been authorized by a Human Resources Officer (HRO) to engage in outside employment with a financial institution. Pursuant to the Force's conflict of interest policy (*COI Policy*) a member is required to obtain such authorization before participating in an outside activity for which the member receives, directly or indirectly, personal benefit. In January 2013, the HRO withdrew his authorization for, and ordered the Appellant to cease, her outside employment (HRO Direction). In response, the Appellant informed the HRO that she had, in fact, already resigned from her position with the financial institution.

In 2014/2015, the Appellant became involved in the promotion and sale of a health supplement and jewellery, for which she was financially compensated. The Appellant did not seek approval from the Force to engage in either of these endeavours. In a meet-

ing in January 2015 with a superior officer once the Appellant's involvement in the two endeavours became known to the Force, the Appellant denied she was selling jewellery.

Three allegations were brought against the Appellant. Allegation #1 stipulated that by engaging in these endeavours without authorization, the Appellant had breached section 4.2 of the *Code of Conduct* which requires members to be "*diligent in the performance of their duties and the carrying out of their responsibilities*". Allegation #2 asserted that the Appellant had failed to comply with the HRO Direction by engaging in those endeavours, contrary to section 3.3 of the *Code of Conduct* which requires members to "*carry out lawful orders and directions*". Allegation #3 alleged that the Appellant had, contrary to section 8.1 of the *Code of Conduct*, lied to a superior in denying that she was selling jewellery. Following a conduct meeting, the Respondent found the three allegations to be established and imposed various conduct measures including a financial penalty of 5 days of pay and a forfeiture of 5 days of annual leave. The Appellant appealed the Respondent's findings on the three allegations and the conduct measures imposed.

ERC Findings: After finding that the appeal was properly referable to the ERC on its merits, the ERC first considered the admissibility of a medical report submitted by the Appellant during appeal proceedings. The ERC referred to the CSOs (*Grievances and Appeals*) which prevents an appellant from filing a document on appeal if it was available during conduct proceedings. The ERC concluded that the medical report was not admissible as it contained information which could reasonably have been provided during the conduct proceedings.

The ERC then reviewed the Appellant's grounds of appeal with respect to the

Respondent's findings on the three allegations. With respect to Allegation #1, the ERC indicated that a breach of section 4.2 of the *Code of Conduct* could be established by evidence that the member's conduct displayed a degree of neglect which distinguishes the conduct from a mere performance issue to an issue of misconduct. The ERC found that while the record supported the Respondent's finding that the Appellant had engaged in secondary activities contemplated by the *COI Policy* without obtaining the required authorization, the Respondent's reasons had not addressed whether the Appellant had displayed the degree of neglect required to substantiate a breach of section 4.2. The ERC found, given this omission, that the Respondent's finding on the allegation was clearly unreasonable and that the appeal should be allowed. However, the ERC was of the view that the Commissioner, in making the finding that the Respondent should have made, could find that the allegation was established. The Appellant's failure to obtain authorization prior to engaging in the promotion and sale of a health supplement and jewellery, in light of her prior knowledge of the *COI Policy's* requirements in that regard evidenced the requisite degree of neglect for a breach of section 4.2 to be established.

With respect to Allegation #2, the ERC did not agree with the Respondent's finding of a failure by the Appellant to comply with the HRO Direction by promoting and selling a health supplement and jewellery. The HRO Direction only directed the Appellant to cease her secondary employment with the financial institution and she had complied with that order at the time it was issued. The Appellant had therefore not breached section 3.3 of the *Code of Conduct*. The ERC recommended that the appeal of the Respondent's finding on Allegation #2 be allowed and that the Commissioner

make the finding that Allegation #2 is not established.

As for Allegation #3, the ERC found that the record supported the Respondent's finding that the Appellant had breached section 8.1 of the *Code of Conduct* by lying to her superior about her involvement in the promotion and sale of jewellery, and it recommended that the appeal of the Respondent's finding on that allegation be dismissed.

Turning to the appeal of the conduct measures imposed by the Respondent, the ERC observed that the Respondent had provided no reasons in support of the conduct measures imposed. This failure resulted in a breach of the Appellant's right to procedural fairness and rendered the Respondent's decision in this regard clearly unreasonable. The ERC recommended that the Commissioner allow the appeal of the conduct measures imposed by the Respondent and impose conduct measures based on the Commissioner's own review of the Record. In that regard, the ERC highlighted the absence of any prior discipline involving the Appellant and her cooperation with the investigation, which were both mitigating factors. As for aggravating factors, the misconduct involving outside activities was repetitive and occurred over an extended period of time. Taking into consideration these factors as well as conduct measure ranges indicated in the Force's *Conduct Measures Guide* and prior relevant cases, the ERC recommended to the Commissioner that he impose a forfeiture of 1 day of the Appellant's pay or of the Appellant's leave in respect of Allegation #1, a forfeiture of 3 days' of the Appellant's pay in respect of Allegation #2 and a written reprimand. The ERC also recommended that the Commissioner confirm a direction to work under close supervision which had been imposed by the Respondent.

ERC Recommendations: The ERC recommends to the Commissioner of the RCMP that he allow the appeal in part and make the finding that Allegation #1 is established and that Allegation #2 is not established. The ERC also recommends to the Commissioner that he dismiss the appeal of the Respondent's finding on Allegation #3. The ERC further recommends that the Commissioner allow the appeal in respect of the conduct measures imposed on the Appellant by the Respondent and impose the above-noted conduct measures based on his own review of the record.

NC-004 Harassment Decision / Referability

The Appellant presented a Harassment Complaint against Sgt. KB. While the Harassment Complaint was being investigated, the Appellant submitted a Retaliation Complaint alleging that Sgt. KB had engaged in reprisals against the Appellant because of the Harassment Complaint. The Retaliation Complaint was handled through a process set forth in section 6 (Retaliation) of Administration Manual XII.8 (Investigation and Resolution of Harassment Complaints) (AM XII.8.6). The Respondent reviewed the Retaliation Complaint and decided that there was no evidence of retaliation by Sgt. KB. The Appellant grieved that Decision but an Adjudicator declined to consider the grievance, finding that the appropriate process for seeking redress regarding the Decision was an appeal. The Appellant appealed the Decision.

ERC Findings: At issue was whether the ERC possessed the legal authority to review the appeal, which would only be the case if the appeal was referable to the ERC pursuant to either subsection 45.15(1) of the *RCMP Act* or section 17 of the *RCMP Regulations*. The ERC found that subsection 45.15(1) had no application as that provision identifies,

as referable, appeals by members who are the subject of decisions made by a conduct board or a conduct authority leading to the imposition of specified conduct measures. The Appellant's appeal did not meet those criteria.

With respect to the applicability of section 17 of the *RCMP Regulations*, the ERC observed that the appeal related to a decision which was linked to the Force's harassment investigation and resolution process. The ERC therefore examined whether subsection 17(a) of the *RCMP Regulations*, pursuant to which the appeals of two types of harassment-related decisions are referable to the ERC, was applicable.

The first type of appeal referable pursuant to subsection 17(a) is the appeal of a decision made under subsection 6(1) of the *CSOs (Harassment)* regarding the timeliness of a harassment complaint. No such decision had been made in this case.

The second type of referable appeal identified in subsection 17(a) of the *RCMP Regulations* is the appeal of the written decision referred to in paragraph 6(2)(b) of the *CSOs (Harassment)* regarding whether the respondent to a harassment complaint has contravened the *Code of Conduct*. The ERC observed that such a decision relates to a "complaint" as that term is used in the context of the *CSOs (Harassment)* and that both the complaint and decision referred to in paragraph 6(2)(b) are part of the Force's harassment complaint investigation and resolution process. By way of contrast, the Respondent's Decision resulted from the review process set out in AM XII.8.6, according to which a retaliation complaint is not to be investigated or resolved as a complaint pursuant to the Force's Policy on the Investigation and Resolution of Harassment Complaints. The Respondent's Decision could therefore not

be characterized as a referable decision made pursuant to paragraph 6(2)(b) of the *CSO (Harassment)*.

ERC Recommendations: This 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.

Former Legislation Cases:

D-130 **Adjudication Board Decision**

Four allegations were brought against the Appellant. Three of the allegations related to the Appellant's failure to thoroughly investigate matters and a fourth allegation related to misleading another member. An RCMP Adjudication Board (Board) was appointed to consider these allegations. However, four preliminary matters were initially addressed by the Board.

First, the Appellant requested that a summons be issued to the Chair of the Board (Chair). The Appellant required the Chair as a witness on a Motion brought to challenge the Board's institutional independence (the Independence Motion). The registrar declined to serve the summons, based on a direction received from the Chair. The Appellant then sought the Chair's recusal by explaining, in two separate recusal requests, why the Chair's evidence was required on the Independence Motion. The Chair refused to recuse himself.

Second, the Appellant requested that one of the other Board members (Board Member #2) recuse himself because of a perceived conflict of interest. Board Member #2 then sent to the Appropriate Officer Representative (AOR), without copying the Appellant's Member Representative (MR), a draft decision denying this recusal request. Board Member #2 and the AOR also had a telephone conversa-

tion in which the AOR made a minor comment regarding the draft decision. Board Member #2 eventually denied the recusal request. When the MR was informed of the exchanges which had taken place between the AOR and Board Member #2, he brought a further request seeking Board Member #2's recusal, which was denied.

Third, the Board heard the Appellant's Independence Motion. After hearing the evidence of two witnesses including Witness A and the parties' submissions, the Board adjourned to deliberate. Four days after the adjournment, and before any decision on the Independence Motion was issued, the Chair was observed discussing the Independence Motion with Witness A. The Appellant sought the recusal of the Chair on the ground that the Chair's actions raised a reasonable apprehension of bias. The Chair denied the recusal request.

Fourth, after the Board released its decision denying the Independence Motion, the Appellant brought a new motion seeking the recusal of the Chair and the entire Board, as well as a reopening of the Independence Motion (Motion to Re-open). The Appellant based the Motion to Re-open on information suggesting that the Chair had previously been involved in matters which raised a doubt as to his ability to have decided the Independence Motion impartially. The Appellant wished to have Witness B testify in support of this new motion. The Board did not allow Witness B to be called and denied the Motion to Re-open.

The Board then proceeded with a hearing on the allegations and found three of the four allegations to be established. The Appellant was ordered to resign. The Appellant appealed the Board's findings on the allegations as well as the various rulings made in regards to the four preliminary matters summarized above.

ERC Findings: The ERC found that the Appellant's grounds of appeal in relation to the four preliminary matters were determinative in the disposition of the appeal.

First, the Chair's direction to the registrar not to issue a summons in the Chair's name and the registrar's failure to issue the summons contravened the requirements of subsection 6(1) of the *Commissioner's Standing Orders (Practice and Procedure)*. While the Appellant was subsequently afforded an opportunity to make submissions regarding the necessity to the Independence Motion of having the Chair testify, the Chair erred in not recusing himself from the Board as the Appellant had established that the Chair's testimony was necessary. The Appellant was denied the opportunity to fully present his case in accordance with subsection 45.1(8) of the *RCMP Act*.

Second, Member #2's private email and telephone communications with the AOR, prior to deciding a request for his recusal by the MR, were not appropriate and gave rise to a reasonable apprehension of bias as they displayed a one-sided familiarity with the AOR during the course of the proceedings.

Third, a reasonable apprehension of bias arose as a result of the Chair discussing the independence Motion with Witness A. The Chair could be perceived as having aligned himself with one side in the case by discussing a matter with a witness prior to any oral or written decision being rendered by the Board on the Independence Motion. The question of whether the discussion ultimately influenced the decision was not relevant to assessing whether a reasonable apprehension of bias existed.

Fourth, the Chair's personal interests were engaged and a reasonable apprehension of bias arose when the Board denied the

request to have Witness B testify in support of the Motion to Re-open. The Board's final Decision contained comments by the Chair regarding his previous involvement in a complaint made against him by Witness B. These comments demonstrated a level of personal involvement which raised a legitimate concern that the Chair may have been unable to impartially decide the request to have Witness B testify.

The ERC found that the errors made by the Board and its individual members in dealing with these four preliminary matters compromised the fairness of the proceedings. Two potentially material witnesses had not provided evidence and the fairness of the proceedings as a whole was called into question by the reasonable apprehension of bias. A new hearing was required to safeguard the integrity of the proceedings and any decision arising out of those proceedings.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he allow the appeal and order a new hearing due to breaches of the Appellant's right to procedural fairness.

G-623 Relocation / Referability

In 2006, the Grievor worked at a detachment in [X] Division. In May 2006, the Grievor was diagnosed with a medical condition which required specialized medical treatment. He was placed on Off Duty Sick and was authorized by the Health Services Officer to complete his medical treatment in another city, over 600 kms away from his home detachment, to receive specialized care and to be closer to family support.

In February 2007, the Grievor started his Graduated Return to Work (GRW) in this same city. A transfer notice (A-22A) was issued to the Grievor and indicated "[t]his

member is doing his GRW in [...] although he is a [...] resource until he is full duties and receives a transfer". One month later, in March 2007, the Grievor was temporarily transferred into an acting position at the same detachment. A further A-22A was issued and contained the following comment "No Cost Transfer. Mbr temporarily acting in the position until a candidate has been successfully identified for the duties. [...]". On January 7, 2008, the Grievor was officially promoted into the same position.

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 *Integrated Relocation Program (IRP)* between 2001 and 2008. The Grievor applied to have his March 2007 transfer reviewed under the Project. The review team determined that the Grievor was ineligible to participate in the Project as his transfer was temporary in March 2007. Thus, the Grievor's transfer was not within the scope of the Project. 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 Recommendations: 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 any findings or recommendations.

G-624 Leave Without Pay

The Grievor worked full-time for 13 years. He then received approval to and worked part-time for 12 years, as follows: "50% of full-time hours using alternating work weeks, i.e. 40 hours one week with zero hours the next week". Throughout the period of part-time service, the Grievor's pension contributions were pro-rated to 50% of full-time contributions. When this period ended, the Grievor returned to full-time service and resumed making full-time pension contributions. Subsequently, he asked that the hours he did not work during his 12 years of part-time service be treated as Leave Without Pay (LWOP). He made this request because the *Royal Canadian Mounted Police Superannuation Act (RCMPSA)* permitted the buy back LWOP as pensionable service. The Grievor's request was refused on the basis that, pursuant to the *RCMPSA*, time not worked during a part-time schedule was not elective pensionable service.

The Grievor filed a grievance. On his grievance form, he disputed the refusal of his request for elective service for time not worked during his period of part-time service. Subsequently, he added to his position by asserting that the RCMP should not have pro-rated his pension contributions during a segment of his part-time service. He asked that the RCMP retroactively collect from him full-time pension contributions for that segment. A Level I Adjudicator denied the grievance on its merits. The Grievor resubmitted his grievance at Level II.

ERC Findings: The ERC found that the subject of the grievance before it was the decision not to treat as LWOP the hours the Grievor did not work during his part-time service. The pro-rating of his pension contributions during his part-time service was not the subject of the grievance. The

Grievor had not previously disputed the pro-rating, neither the impugned decision nor his initial grievance form addressed the pro-rating and there was no necessary nexus between that issue and the LWOP decision. The LWOP and pro-rating arguments were distinct arguments which gave rise to distinct timeliness, substantive and remedial considerations. They also derived from different actions or decisions of the Force.

The ERC found that the RCMP's refusal to treat the hours the Grievor did not work during his part-time service as LWOP was consistent with the terms and conditions of the Grievor's employment and applicable authorities. The relevant RCMP and Treasury Board LWOP policies contained requirements that had to be satisfied before LWOP could be granted. The Grievor did not contemplate or satisfy any of those requirements. Moreover, nothing in a Memorandum of Agreement (MOA) signed by the parties suggested that the parties intended to treat as LWOP the unworked hours during the Grievor's part-time service. Rather, the MOA demonstrated that, from the outset, the Grievor was aware of the specific terms and conditions of his part-time service and of the effect of that service on his benefits. This was not a case where a member was confused or misled regarding his change in circumstances and benefits. Neither the case law nor the other principles upon which the Grievor relied bolstered his position.

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

G-625 Harassment / Referability

In January 2006, the Grievor and four other RCMP members forwarded multiple formal harassment complaints against their immediate supervisor to the Central Region

Conflicts Resolution (CRCR) office in Ottawa. They also met with the Respondent to advise him that they were filing these complaints against an officer under his command. During the meeting, the Grievor advised the Respondent that one of his eight allegations against the supervisor contained three elements:

- the supervisor counselled the Grievor to falsify a police motor vehicle accident (MVA) report;
- the supervisor was causing damage to his own police vehicle; and
- the supervisor was not reporting the damage he was causing.

Without the Grievor's knowledge and before the harassment complaints reached the CRCR, the Respondent ordered a *Code of Conduct* investigation under Part IV of the *RCMP Act* into the allegation that the supervisor had counselled the Grievor to falsify an MVA report. Based on the investigation report, the Respondent found that the Grievor's allegation was unsupported. The Grievor grieved this decision. Subsequently, when the Grievor learned that the Respondent had limited the *Code of Conduct* investigation to only one element of the three-part allegation, the Grievor grieved that decision as well.

The Office for the Coordination of Grievances characterized Grievance #2 as a collateral issue to Grievance #1 and merged the two grievances into one file. In February 2012, a Level I Adjudicator issued a preliminary ruling in which she found that the Grievor did not have standing. The Grievor sought review at Level II.

The issue before the ERC was whether the grievance file was referable to the ERC.

ERC Findings: The ERC first found that the Grievor submitted two distinct grievances against two separate decisions:

Grievance #1: the Respondent's decision that the Grievor's allegation that his supervisor counselled him to falsify an MVA report was unsupported; and

Grievance #2: the Respondent's decision to single out from the Grievor's harassment complaints one three-part allegation, sever the one allegation that his supervisor counselled him to falsify an MVA report and investigate the single allegation.

The ERC noted 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*. The ERC found that Grievances #1 and #2 did not involve the types of grievances set out in subsections 36(b) to (e). Therefore, for the grievances to be referable to the ERC, the underlying subject matter must fall within subsection 36(a) of the *1988 Regulations*.

Subsection 36(a) of the *1988 Regulations* concerns cases relating to "the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members". The ERC found that the present grievances did not involve the Force's interpretation and application of any government-wide policy that applied to RCMP members. The Respondent's decisions to investigate and to limit the scope of the investigation were decisions made in the course of a Part IV *Code of Conduct* investigation into an officer under his command. The decisions were not made as part of a harassment complaint investigation under the *Treasury Board Policy on Prevention and Resolution of Harassment in the Workplace* or other government-wide policy applicable to members of the Force. As such, neither grievance fell within subsection 36(a).

ERC Recommendation: The grievances are not referable to the ERC. As a result, the ERC does not have the legal authority to further review the grievances or to make any findings or recommendations.

G-626 Language Requirements / Referability

In September 2009, an advertisement for the position that the Grievor held in an acting capacity for four years was published. The Grievor applied to obtain the position on a permanent basis. In October 2009, the Grievor was screened out because he did not meet the linguistic profile of the position. The Grievor filed a request for intervention in accordance with the *Commissioner's Standing Orders (Orders) (Dispute Resolution Process for Promotions and Job Requirements)*. One of the purposes of this request was the linguistic profile assigned to the position sought.

The Adjudicator for promotion disputes refused to deal with the linguistic profile issue because in her view it fell under a grievance adjudicator. The Adjudicator asked the Office for the Coordination of Grievances to open a grievance case on the issue and it was sent to a grievance adjudicator. The Grievance Adjudicator indicated that she could not consider the grievance because no grievance form was filed by the Grievor and there was nothing on record to show the Grievor's willingness to proceed through the grievance process. The Grievor filled out a grievance form to contest this decision at Level II.

ERC Findings: The ERC found that the file should not have been referred to it because no grievance form was filed at Level I to start the grievance process. Accordingly, the file does not constitute a grievance under the *Commissioner's Standing Orders (Grievances)*. Subsequently, for a grievance to proceed to Level II, a decision on the merits is required. No decision resolving the linguistic profile issue was rendered in this case.

ERC Recommendation: The file is not referable to the ERC. As a result, the ERC does not have the legal authority to review the matter or make any findings or recommendations.

G-627 Relocation / Standing

In January 2005, the Grievor was transferred from Ottawa to Lyon, France. In June 2007, he was transferred from Lyon back to Ottawa. Before leaving France, he presented a grievance against the Force's alleged omission to pay him a transfer allowance in respect of each of his 2005 and 2007 foreign service relocations, pursuant to the RCMP's *Integrated Relocation Policy (IRP)*.

The Grievor conceded that the *Foreign Service Directives (FSD)* applied to his transfers to and from France. However, he argued that since the *FSD* made no mention of and therefore did not rule out entitlement to a transfer allowance, he was entitled to the transfer allowance provided under the *IRP*. The Respondent argued that only the *FSD* applied to the Grievor's foreign service transfers and that the Grievor received the *FSD* allowances provided under the *FSD*.

After requesting and receiving the parties' submissions on the issue of standing, the Level I Adjudicator found that the Grievor had standing. However, the Adjudicator denied the grievance on the merits. He found that the Grievor failed to establish his entitlement to the *IRP* transfer allowance as it was clear that the *FSD* applied to the two transfers.

ERC Findings:

Standing

The Chair found that the Grievor did not have standing. The Chair noted that the ERC has adopted the concept that an omission occurs only if the Force fails to fulfill a

duty, obligation or commitment (see G-223, G-332). If the Force is not under any duty or obligation to act, a failure to do so does not constitute an omission that can be the subject of a grievance (see G-249). The Chair found that there was no obligation for the Force to automatically pay an *IRP* transfer allowance, which is only paid if the *IRP* applies to the member's transfer and the member has submitted receipts to support a claim for the allowance. There was no evidence in the record that the Grievor had submitted any receipts or made any claim before presenting his grievance. As there was no duty or obligation to automatically pay the *IRP* transfer allowance, the Force did not commit an omission and, therefore, the Grievor did not have standing to grieve.

Merits

The Chair found that the provisions of the *FSD* and the *IRP*, read in their entire context and ordinary sense, clearly established that only the *FSD* applied to the Grievor's foreign service relocations to and from France. Thus, the *IRP*'s benefits and allowances were not available to the Grievor. Further, as the Grievor did not dispute that he had received the *FSD*'s incidental relocation expense allowance, the purpose of which is to fund the same type of expenses funded by the *IRP*'s transfer allowance, the Grievor's interpretation would result in double recovery and personal gain, which is contrary to the purposes of the *IRP* and the *FSD*.

ERC Recommendation: The ERC recommends that the Commissioner deny the grievance on the bases that the Grievor did not have standing and the grievance was without merit.

Commissioner of the RCMP Final Decisions

The Commissioner of the RCMP has provided his decision in the following matters, for which the ERC's Findings and Recommendations were summarized in previous issues of the *Communiqué*:

Current Legislation Cases:

C-011 Conduct Authority Decision

(summarized in the March – May 2016 Communiqué) The Respondent determined that the Appellant contravened section 8.1 of the *Code of Conduct* by placing inaccurate information in a Report to Crown Counsel (RTCC). The Respondent implied the Appellant would be able to offer oral submissions involving the allegations and possible conduct measures, yet no such opportunity was provided. The ERC concluded that, on the date he issued his decision, the Respondent should have made no finding or found that both allegations were not established, as the Appellant did not have the opportunity to comprehensively provide oral submissions on the allegations and the conduct measures, contrary to the conduct process established by the Force. This breach of procedural fairness cannot be rectified at this stage of the proceeding. The ERC recommended to the Commissioner of the RCMP that he allow the appeal and make the finding that Allegation #1 is not established. The ERC also recommended to the Commissioner that he allow the appeal in respect of the conduct measures imposed on the Appellant by the Respondent and rescind the conduct measures.

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

The Appellant appeals the Respondent's finding that one allegation of false, misleading or inaccurate statements to a superior contrary to section 8.1 of the RCMP Code of Conduct, was established. He also appeals the conduct measure administered on that contravention. The Conduct Appeal Adjudicator agreed with the ERC's findings and recommendation to allow the appeal on the Allegation and find Allegation #1 not established. The Appellant's right to procedural fairness was seriously and irreparably breached. The Conduct Appeal Adjudicator also agreed with the ERC that the appeal of the conduct measures should also be upheld and accordingly rescind the conduct measures.

NC-002 Harassment / Time Limits

(summarized in the March – May 2016 Communiqué) The Appellant filed a harassment complaint more than two years after the alleged harassment. The Respondent dismissed the complaint because more than one year had passed since the last event of harassment alleged in the complaint. The Appellant appealed this decision. The ERC found that the Respondent, by dismissing the Appellant's harassment complaint, did not commit any palpable or overriding error that would allow for an appellate intervention. The ERC concluded that the Appellant did not meet his burden of proving, on a balance of probabilities, that exceptional circumstances prevented him from filing his harassment complaint within the time limit. The ERC recommended to the Commissioner of the RCMP that the appeal be denied.

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

[TRANSLATION]

The Commissioner agrees with the External Review Committee's recommendation. The appeal is denied on the ground that the harassment complaint was filed after the time limit. The Commissioner is also of the view that there are no exceptional circumstances justifying an extension of time to file the harassment complaint. Finally, the Commissioner asks the National Policy Centre for harassment complaints to take the necessary measures to ensure that the terminology used in the policy and National Guidebook is consistent with that used in the Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints) by referring to "exceptional circumstances" rather than "mitigating circumstances".

NC-003 **Harassment / Time Limits**

(summarized in the March – May 2016 Communiqué) The Appellant filed a harassment complaint more than two years after the alleged harassment. The Respondent dismissed the complaint because more than one year had passed since the last event of harassment alleged in the complaint. The Appellant appealed this decision. The ERC found that the Respondent, by dismissing the Appellant's harassment complaint, did not commit any palpable or overriding error that would allow for an appellate intervention. The ERC concluded that the Appellant did not meet his burden of proving, on a balance of probabilities, that exceptional circumstances prevented him from filing his harassment complaint within the time limit. The ERC recommended to the Commissioner of the RCMP that the appeal be denied.

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

[TRANSLATION]

The Commissioner agrees with the External Review Committee's recommendation. The appeal is denied on the ground that the harassment complaint was filed after the time limit. The Commissioner is also of the view that there are no exceptional circumstances justifying an extension of time to file the harassment complaint. Finally, the Commissioner asks the National Policy Centre for harassment complaints to take the necessary measures to ensure that the terminology used in the policy and National Guidebook is consistent with that used in the Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints) by referring to "exceptional circumstances" rather than "mitigating circumstances".

Former Legislation Cases:

D-128 **Adjudication Board Decision**

(summarized in the March – September 2015 Communiqué) The Appellant was arrested for shoplifting and suspended with pay. At the hearing, the Appellant submitted an "admission of facts," admitting to one allegation of disgraceful conduct. In view of this admission, the Adjudication Board concluded that the allegation was established and ordered the Appellant to resign within 14 days. The Appellant challenged the Board's findings regarding its decision on the sanction. The ERC found that 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 recommended the appeal be dismissed.

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

[TRANSLATION]

In a decision rendered on June 1, 2016, Commissioner Robert W. Paulson agreed with the ERC's findings and recommendations and dismissed the Appellant's appeal from the Adjudication Board's decision ordering the Appellant to resign within 14 days or be dismissed.

The Commissioner rejected the Appellant's argument that the Adjudication Board erred in the assessment of the evidence of the expert witness. Considering the principles set out in R. v. Lavallée, [1990] 1 S.C.R. 852 and Pizarro v. Canada (Attorney General), 2010 FC 20, the Commissioner determined that the Adjudication Board was not required to accept the expert evidence furnished by the Appellant. The reasons provided by the Adjudication Board to dismiss the expertise, including the altered state of consciousness doctrine, do not reveal any palpable or overriding errors.

As for the assessment of the Appellant's intent to steal, the Commissioner found that the Adjudication Board correctly considered this issue as the Appellant had introduced the altered state of consciousness doctrine, despite her admission. The Commissioner did not find any palpable or overriding errors in this regard.

Furthermore, the Commissioner disagreed with the Appellant's position that the Adjudication Board identified the absence of an agreed statement of facts as an aggravating factor. The Adjudication Board's observations concerning the absence of an agreed statement of facts do not reveal any palpable or overriding errors.

As for the Adjudication Board's findings of fact, the Commissioner determined that they were not inconsistent with the evidence presented. In the absence of any palpable or overriding errors, there is no need to intervene.

The Commissioner also noted that the Adjudication Board reasonably weighed the mitigating and aggravating factors, but then went on to find that the mitigating factors were not sufficient to mitigate the Appellant's misconduct. The Adjudication Board also considered the authorities submitted by the Appellant and gave extensive reasons as to why it did not consider them to be proper precedents. Thus, there is no need to vary the sanction imposed by the Adjudication Board.

Finally, the Commissioner rejected the Appellant's argument that the Adjudication Board should not have ruled on settlement privilege because no objection was raised. However, in light of the Appellant's interventions at the hearing and final submissions, the Commissioner found that the Adjudication Board was right to address this issue.

Ultimately, the Commissioner did not identify any palpable or overriding errors in the Adjudication Board's decision. He confirmed the Adjudication Board's decision to order the Appellant to resign from the RCMP within 14 days of this decision or be dismissed.

G-612 Isolated Posts

(summarized in the October 2015 – February 2016 Communiqué) In May 2009, the Grievor became aware that he was eligible to file for a vacation travel allowance VTA for fiscal year 2008-09, and immediately submitted a VTA claim. The Respondent denied the claim because it had not been submitted

prior to the March 31, 2009 deadline. The Grievor argued that he was not aware, prior to March 31, that he was eligible for a VTA for that fiscal year. The ERC found that it was the Grievor's responsibility to be familiar with policies applicable to his situation. 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:

The Grievor presented a grievance against the Respondent's decision to deny his Vacation Travel Assistance (VTA) claim for the fiscal year 2008-09 on the basis that his claim was not submitted before March 31, 2009. The Commissioner accepts the ERC's findings that the Grievor had the responsibility to inform himself with respect to the benefits available to him pursuant to the National Joint Council Isolated Post & Government Housing Directive. The Respondent's decision to refuse to pay the Grievor a VTA for the 2008-09 fiscal year is consistent with policy. The grievance is denied.

G-613 **Bilingualism Bonus / Time Limits**

(summarized in the October 2015 – February 2016 Communiqué) In November 2003, the Grievor was transferred. Before his transfer, the Grievor received a bilingual bonus, but stopped receiving it in May 2004 when his position changed. In March 2008, the Grievor noticed a sign at the main entrance of his detachment indicating that services to the public were offered in both official languages. At the time, the Grievor was the only Francophone member present in the detachment during opening hours. The Grievor filed a grievance challenging the withdrawal of his bilingual bonus. The ERC found the fact that the Grievor noticed a sign in 2008 informing

the public that it could receive services in both official languages does not warrant an extension of the limitation period for filing a grievance. 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 Grievor challenges the withdrawal of his bilingual bonus following a transfer. The ERC recommended that the grievance be denied on the ground that it was not presented within the time limit prescribed by section 31(2)(a) of the Act. For the reasons set out in this decision, the Commissioner agrees with the ERC's recommendations and denies the grievance.

G-614 **Discrimination / Duty to Accommodate**

(summarized in the March – May 2016 Communiqué) The Grievor indicated his interest in competing for a Professional Standards (PS) position in his detachment that was being advertised internally. The Respondent denied the Grievor the opportunity to compete for the position as the position was fully operational and the Grievor could not fulfil this requirement due to his medical profile. Later, the Grievor was transferred to a PS position in another detachment. The Grievor grieved the Respondent's decision to refuse to consider him for the PS position. The ERC recommended that the Commissioner of the RCMP deny the grievance on the basis that the Force satisfied its duty to accommodate the Grievor pursuant to the *Canadian Human Rights Act (CHRA)* and the *RCMP Accommodation Policy*. The ERC also recommended to the Commissioner that he order the Respondent to apologize

to the Grievor for her failure to satisfy her role in the process of accommodation as she did not establish that the fully operational requirement for the PS position was a *bona fide* operational requirement pursuant to paragraph 15(1)(a) and subsection 15(2) of the *CHRA* and section D.3. of the *RCMP Accommodation Policy*.

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

The Grievor presented a grievance after he was denied an opportunity to compete for an internally advertised position based on an existing medical condition. The Respondent maintained that the position must remain fully operational, and since the Grievor's limitations and restrictions prohibit him from incidents of high risk, the Respondent decided to exclude the Grievor from the job competition. The Grievor argued that the Respondent discriminated against him based on a prohibited ground of discrimination-his disability-in violation of the Canadian Human Rights Act and the RCMP's policy on Duty to Accommodate Members with Disabilities. Shortly after the aggrieved decision, the Grievor was accommodated in an identical position at Division Headquarters. Level I denied the grievance. The Commissioner accepted the ERC recommendation to deny the grievance on the basis that the Force satisfied its duty to accommodate the Grievor.

G-615 Relocation Expenses / Time Limits

(summarized in the March – May 2016 Communiqué) The Grievor was advised that he had been erroneously reimbursed for his Canada Mortgage and Housing Corporation (CMHC) fees. After unsuccessful attempts to recover the monies, the Grievor was advised that collection procedures would be initiated if payment was not received. When the

Grievor was advised that his future expense claims and/or income would be garnished, he filed a grievance. The ERC found that the Grievor ought to have known that he was aggrieved when the decision to recover the monies was first communicated to him. The ERC recommended that the Commissioner of the RCMP deny the grievance on the basis that it was not presented in time at Level I.

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

The Grievor presented a grievance after being advised that he had been over-reimbursed for expenses during his relocation in 2003. The Respondent challenged the time limitation period in which the Grievor presented his grievance. The Grievor contends that he was not aggrieved by the initial decision to recover the allegedly owed funds but rather by the decision by the Force to initiate garnishment proceedings. The Grievor argues that his grievance was presented within 30 days of learning of the garnishment decision. Level I denied the grievance. The Commissioner accepts the ERC's findings that the Grievor knew or ought to have known that he was aggrieved when the initial decision to recover the fees was made in 2004. The grievance was presented in 2010 and therefore, was not presented within the time limitation period prescribed by the Act. The Commissioner also accepts the ERC's recommendation that an extension of time to file the present grievance pursuant to s. 47.4(1) of the Act should not be granted in the circumstances. The grievance is denied.

G-621 Foreign Service / Standing

(summarized in the March – May 2016 Communiqué) The Grievor worked at an overseas post where his accommodation was provided by the Department of Foreign

Affairs and International Trade (DFA). The Grievor identified certain deficiencies with his accommodation and asked for, and was given, an Accommodation Deficiency Adjustment (ADA). The ADA reduced the Grievor's costs by a sum the Grievor deemed insufficient. The Grievor wrote a submission for the DFA Committee on Accommodation Deficiencies (COAD) wherein he sought a review of the ADA decision. The COAD decided to award the Grievor a somewhat different ADA, with which the Grievor was still unsatisfied. The Grievor grieved the COAD decision. The ERC found that the disputed decision was not made in the administration of the affairs of the RCMP and, as a result, that the Grievor did not have standing. The ERC recommended 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:

The Grievor presented a grievance challenging the decision made by the Department of Foreign Affairs and International Trade Committee on Accommodation Deficiencies to reduce his Accommodation Deficiency Adjustment. The Respondent raised the preliminary issue of standing on the basis that the decision was not made "in the administration of the affairs of the Force". The Level I Adjudicator denied the grievance on that basis. The Commissioner agreed with the ERC that the Grievor does not have standing as the impugned decision falls outside the jurisdiction of the RCMP. The Grievance is denied.

G-622 Meal Allowance

(summarized in the March – May 2016 Communiqué) The Grievor worked two shifts outside his headquarters area and asked for the meal he ate at mid shift of each of his shifts to be reimbursed at the dinner rate. The Respondent refused on the ground that the Grievor was entitled to a reimbursement of his meals at the lunch rate pursuant to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD). The ERC found that the TBTD clearly indicates that shift workers are to be reimbursed based on the meal sequence of breakfast, lunch and dinner, regardless of the time their shift begins. The ERC recommended to the Commissioner of the RCMP that the grievance be denied.

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

[TRANSLATION]

The Grievor presented a grievance against the Respondent's refusal to reimburse him for meals at the dinner rate, without a receipt. The Respondent submitted that without a receipt the Grievor's request could not be granted. The Level I Adjudicator denied the grievance on the ground that according to the Treasury Board Travel Directive (TBTD), the Grievor was rather entitled to a reimbursement of his meals at the lunch rate, without a supporting document.

The Commissioner accepted the ERC's recommendations. The Grievor worked 10-hour shifts and claimed a reimbursement for a meal per shift. According to the TBTD, the Grievor is entitled to a reimbursement of his meals at the lunch rate, without providing a receipt. The grievance is denied.

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