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Findings and Recommendations

Between April and September 2017, the RCMP External Review Committee (ERC) issued the following findings and recommendations:

Current Legislation Cases:

C-015 Conduct Authority Decision

During the period relevant to this appeal, the Appellant served at an isolated post in a two-member detachment. The detachment commander prepared and posted a detachment schedule that included himself and the Appellant working six days on and three days off. To cover a member on short term leave, the other member worked his shift, then placed himself on-call and was compensated through an "Immediate Operational Readiness" allowance.

In late 2014 and early 2015, the Appellant was spoken to multiple times about the importance of adhering to and, obtaining the proper approval to modify, shift schedules. During the last meeting, the Appellant received a Negative Performance Log 1004 for not properly adhering to a shift schedule.

Subsequently, on April 24, 2015, the Appellant left a shift early, without prior approval, to take his pregnant spouse to the hospital after she believed her water broke. Three days later, on April 27, 2015, the Appellant failed to attend a scheduled shift, without prior approval, because a contractor showed up at his home unannounced to perform long-required work and the contractor needed help which the Appellant's spouse was unable to provide.

Two allegations of failing to remain on duty were brought against the Appellant. A *Code of Conduct* investigation regarding the actions of the Appellant set forth above was initiated by the Respondent on April 28, 2015. After having reviewed the Investigation Report and the information provided to him by the Appellant at the conduct meeting, the Respondent found that the Allegations were established.

The Appellant appealed both the finding on the allegations and the conduct measures imposed. He submitted the allegations were unfounded, that the Respondent was biased and disputed one of the aggravating factors cited.



ERC Findings: The ERC found that in order to establish the allegations, the Respondent had to find, on a balance of probabilities, that the Appellant was scheduled to work, did not attend his shift as scheduled and was not authorized to do so. There was no requirement to find that the Appellant's actions were disgraceful or brought discredit on the RCMP. Thus, it found that the Respondent correctly stated that the allegations were brought under section 4.1 of the *RCMP Code of Conduct* and correctly identified and weighed the evidence in the record relevant to the allegations.

The ERC also found that the presentation to the Appellant of a completed decision at the Conduct Meeting gave rise to a reasonable apprehension of bias on the part of the Respondent. It found that an informed person, understanding the role of the conduct meeting and viewing the matter realistically, would conclude there is a likelihood of bias; that the Respondent had already made up his mind, both as to the establishment of the Allegations and the imposition of conduct measures, prior to hearing the Appellant's submissions at the Conduct Meeting. The ERC also found that, contrary to the Appellant's assertion, the *RCMP Act* and the *Conduct Policy* establish a legislative scheme that clearly provides for a conduct authority to first determine whether an investigation is warranted, and order any required investigation, and to, subsequently, render a decision on the allegation(s).

Lastly, the ERC found that the issues identified with the Appellant's notebook as an aggravating factor were not relevant to the Allegations of not remaining on shift and not reporting for shift, in each case without prior approval.

ERC Recommendations: The ERC recommends that the Commissioner, pursuant to paragraph 45.16(2)(b) of the

RCMP Act, allow the Appellant's appeal and make the finding that, in the Commissioner's opinion, the Respondent should have made. The ERC is of the opinion that the evidence in the record establishes Allegations 1 and 2 on a balance of probabilities. It is clear that the Appellant did not complete his shift on April 24, 2015 and that he did not report for work on April 27, 2015. In neither case did the Appellant seek prior approval for his absences nor did he otherwise notify the detachment commander.

The ERC also recommends to the Commissioner that, pursuant to paragraph 45.16(3)(b) of the *RCMP Act*, he allow the appeal of the conduct measures imposed by the Respondent in respect of Allegation 2 and impose new conduct measures.

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

The Appellant is a senior constable working at an isolated three-member detachment, which – at the time – operated with only two members. The Appellant, along with the detachment commander, worked a shift rotation which was posted. When one of the members was unavailable to work – such as during periods of leave – the remaining member would maintain the ability to respond to calls for service by working his own shifts and then going on-call and was compensated by receiving an Operational Readiness allowance.

Between November 2014 and February 2015, the Appellant was directed – on three occasions – to adhere to the shift schedule and to obtain approval before modifying a shift. On the third occasion, the Appellant was provided operational guidance – documented on a form 1004 performance log – for failing to adhere to the posted shift schedule.

On April 24, 2015, without prior approval, the Appellant left his shift early to take his pregnant spouse to the hospital. On April 27, 2015, without prior approval, the Appellant did not attend his shift because he was tired from helping a contractor work on his RCMP owned residence earlier that day.

The detachment commander attended the detachment on April 27, 2015, and noticed that the Appellant was scheduled to work but was not on duty. The Respondent initiated a Code of Conduct investigation into whether the Appellant had:

- *(Allegation 1) left his scheduled shift early on April 24, 2015, without seeking prior approval from his commander, contrary to s. 4.1 of the Code of Conduct; and*
- *(Allegation 2) failed report for duty for his scheduled shift on April 27, 2015, without seeking prior approval from his commander, contrary to s. 4.1 of the Code of Conduct.*

During the Conduct Meeting the Respondent presented his decision – written prior to the Conduct Meeting – to the Appellant. The Respondent found that the allegations were established and imposed conduct measures as a result of that finding. The Respondent's findings and the conduct measures he imposed were appealed.

The Royal Canadian Mounted Police External Review Committee (ERC) reviewed this Appeal and provided recommendations pursuant to s. 45.15 of the RCMP Act. The Conduct Appeal Adjudicator followed the ERC's recommendations in relation to the Respondent's findings and partially adhered to the ERC's recommendations relating to conduct measures.

The Conduct Appeal Adjudicator allowed the appeal due to a breach of procedural

fairness – the Respondent's findings and conduct measures were determined prior to hearing submissions from the Appellant. The Conduct Appeal Adjudicator then made the finding and imposed the conduct measures he believed the Respondent should have made/imposed.

The Conduct Appeal Adjudicator found both allegations were established. The Conduct Appeal Adjudicator imposed the following conduct measures: a reprimand; direction to review specified RCMP policy relating to shift schedules; direction to work under close supervision for one year; direction that Appellant will be ineligible for promotion for one year; financial penalty of 16 hours of pay.

C-016 Conduct Authority Decision

After many years of living together, the Appellant broke up with his spouse in December 2013. The Appellant and his ex-spouse had two young daughters. The Appellant and his ex-spouse continued living together in the family residence but slept in separate rooms. The relationship between the Appellant and his ex-spouse deteriorated quickly, and the Appellant left the family residence. His ex-spouse and two daughters continued living there. On August 14, 2014, there was an altercation between the Appellant and his ex-spouse as the Appellant was finishing moving his personal effects out of the family residence. The couple's older daughter witnessed the scene. After this incident, the Appellant's ex-spouse filed an assault complaint against him with the municipal police department. When he was arrested, the Appellant also filed an assault complaint, against his ex-spouse. No criminal charges were laid against the Appellant or his ex-spouse.

The Conduct Authority issued an initial investigation mandate containing a single allegation of discreditable conduct for

assault under section 7.1 of the *Code of Conduct*. After receiving the investigation report, the Conduct Authority requested another investigation into four new allegations under sections 7.1 and 4.6 of the *Code of Conduct*. Following the conduct meeting, the Conduct Authority determined that three of the five allegations had been established. The Conduct Authority found that the Appellant had assaulted his ex-spouse, had tried to influence the testimony of his older daughter and had used an RCMP cellular telephone for inappropriate personal purposes.

The Appellant appealed the Conduct Authority's decision. He submitted that the Respondent had made errors of fact in assessing the evidence concerning the first allegation (assault), as well as in assessing the credibility of the witnesses. More specifically, the Appellant stated that the testimony of his older daughter was not credible because she was the victim of parental alienation. The Appellant also argued that the Respondent had applied a stricter standard than the one provided in the *Code of Conduct* with regard to the allegations concerning the use of an RCMP telephone and the communications with his older daughter. According to him, his use of the telephone was reasonable, and as soon as he was aware that he was not allowed to use it for personal purposes, he acquired a personal cellular telephone. As for the communications with his daughter, the Appellant noted that he had not tried to influence her testimony; he wanted to discuss the situation with his daughter, as any father would.

ERC Findings: The ERC found that the Respondent had not made a manifest and determinative error in assessing the evidence regarding the allegation of assault. The Respondent stated that he had considered the Appellant's statements, as well as those

of his ex-spouse and his older daughter. He argued that there were contradictions in the witnesses' versions of the facts and that the information on record did not allow him to make findings on the credibility of the Appellant or that of his ex-spouse. However, he found the testimony of the Appellant's older daughter to be credible, and he considered the circumstances surrounding her situation.

The ERC also declared that the Respondent's finding that there had been excessive use of the cellular telephone provided by the RCMP was reasonable and that this ground of appeal was unfounded. As for the allegation concerning the inappropriate communications between the Appellant and his daughter, the ERC found that the Respondent had not made a manifest and determinative error. The Respondent explained his reasoning and the evidence that had allowed him to make his finding. He mentioned the messages from the Appellant to his daughter and her replies to them. It appears that the numerous messages from the Appellant to his daughter, and the tone used in them, went far beyond the reasonable conduct of a father wanting to make sure that his daughter knew all facts related to the incident in question.

ERC Recommendation: The ERC recommends that the appeal be dismissed.

C-017 Conduct Board Decision

In 2015, the Respondent arrested an individual for impaired driving. This individual provided breath samples of 100mg% and 90mg%. Following an inquiry from his supervisor on this file, the Respondent forged an email exchange with a local Crown prosecutor in which the latter stated that there would be no charges laid against the individual. The Respondent

made electronic file reports reflecting this exchange and repeated the gist of the email to his supervisor. He placed a copy of the email exchange on the file and in the Police Reports Occurrence System. The Respondent did not know the individual. However, he believed this person would lose his employment if a charge was filed as the charge would trigger an extended license suspension. The Respondent accidentally transmitted the email to the Crown prosecutor. The Crown prosecutor brought the matter to the attention of his supervisor, the Regional Director of Public Prosecutions, who filed a complaint with the Force. The Respondent was criminally charged with forgery and uttering a forged document. He pled guilty to the charge of forgery and received a conditional discharge, four months' probation, an order to make a \$1,000 charitable contribution (which was made) and a direction to continue psychological counselling.

The Appellant sought the Respondent's dismissal from the RCMP. A Conduct Board was convened under the new *RCMP Act*. The Board was of the view that, under the circumstances, dismissal was unduly harsh. It imposed an aggregate forfeiture of 60 days of the Respondent's pay and other conduct measures. The Appellant appealed the conduct measures and requests that the Respondent be dismissed.

ERC Findings: The ERC found that the Board committed no manifest or determinative error in its consideration and weighing of the implications of the *McNeil* disclosure obligations on the continued employment of the Respondent. The Board's conclusion that the retention of the Respondent would not place an untenable administrative burden on the Force is consistent with the case law and the Board's consideration of all of the other factors in this case. The ERC further found that the Board committed no error in failing

to consider the elements of the Allegations as aggravating factors in the imposition of conduct measures as aggravating factors must go above and beyond the constituting elements of the allegation. The ERC found that the Board committed no manifest and determinative error in the appreciation of the mitigating and aggravating factors.

Further, the ERC found that there was no error in the Board's decision on sanction as there is no statutory limit to forfeiture of pay in the RCMP regime. The Board balanced the serious nature of the misconduct of the Respondent against a number of persuasive mitigating factors, including his psychological state, his exemplary performance and continued support within the Force, and his rehabilitative potential. Finally, the ERC found that the Board did not contravene the principles of procedural fairness when it did not call specific witnesses. The ERC found that the new conduct board regime did not alter the adjudicative nature of conduct boards.

ERC Recommendation: The ERC recommends that the Commissioner dismiss the appeal and confirm the conduct measures imposed by the Board.

C-018 Conduct Authority Decision

The Appellant was the subject of a harassment complaint. Following an investigation, the Commanding Officer (CO) issued a decision finding that the complaint was established and imposing remedial conduct measures. However, the CO failed to serve the Appellant with a notice of conduct meeting and to hold a conduct meeting prior to issuing his decision, as required by provisions of the Force's *Conduct Policy* and *Investigation and Resolution of Harassment Complaints Policy*. The Appellant appealed the CO's decision (Appeal #1).

Shortly thereafter the procedural error described above was identified. The new CO, the Respondent, acting as the conduct authority, re-started the process and served the Appellant with a notice of conduct meeting. A conduct meeting was held with the Appellant, as a result of which the Respondent issued a written decision finding that the Appellant had engaged in harassment in contravention of section 2.1 of the *Code of Conduct* (Respondent's Decision). However, the Respondent did not impose conduct measures as the one year limitation period for the imposition of such measures under subsection 42(2) of the *RCMP Act* had expired.

The Appellant appealed the Respondent's Decision (ERC Appeal). He questioned the propriety of re-starting the conduct process while Appeal #1 was pending, and raised other grounds of appeal in relation to the Respondent's Decision. Around the same time, the Commissioner allowed Appeal #1, quashed the CO's decision and directed that the matter be remitted to the Respondent and dealt with in accordance with policy.

ERC Findings: The ERC Appeal related to a decision that the Appellant had contravened the *Code of Conduct*. The authority providing such a right of appeal was found at subsection 45.11(3) of the *RCMP Act*. In order for such an appeal to be referable to the ERC, it must satisfy the criteria identified in subsection 45.15(1) of the *RCMP Act* in that the appeal must relate to one of the conduct measures identified therein or to any finding that resulted in its imposition. As no conduct measures were imposed by the Respondent, the ERC had no legal authority to issue findings and recommendations to the Commissioner.

ERC Recommendation: This appeal 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 any findings.

NC-006 Harassment / Referability

The Appellant worked with a joint forces operation led by the RCMP, housed in an RCMP office and governed by a written agreement between the RCMP and participating partner agencies. The Appellant's line officer was a police officer employed by the Ontario Provincial Police (OPP) (Alleged Harasser).

The Appellant filed a harassment complaint (Complaint) with the RCMP stating that the Alleged Harasser repeatedly undermined his career. The Respondent and other RCMP harassment officials evaluated the Complaint and concluded that the RCMP's harassment policy did not permit the RCMP to investigate or impose measures against alleged harassers employed by other agencies. An RCMP harassment advisor advised the Appellant that the RCMP did not have authority to investigate the Complaint. She suggested that the Appellant raise the Complaint with the OPP and provided the coordinates of an OPP superintendent, Supt. S, to the Appellant as a contact person. Supt. S advised the Appellant that the Alleged Harasser had recently retired, precluding the OPP from compelling the Alleged Harasser to cooperate in any OPP harassment investigation. Several months later, the Appellant received an email from an RCMP Employee Management Relations Advisor stating that, as the Alleged Harasser had retired, there were no remaining processes within the RCMP to address the Grievor's Complaint.

The Grievor filed an appeal, asserting that the Respondent failed to properly deal with the Complaint.

ERC Findings: The ERC stated that five types of non-conduct appeals are referable to the ERC, pursuant to section 17(a) to (e) of the *Royal Canadian Mounted Police Regulations*,

2014 (*Regulations*). The present non-conduct appeal did not fall within the ambit of subsections 17(b) to (e), as those subsections all deal with subjects that were not at issue.

The other type of referable non-conduct appeal is identified in subsection 17(a) of the *Regulations*. It involves an appeal of a decision that is described in subsection 6(1) or paragraph 6(2)(b) of the *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)*, which read as follows:

- 6 (1) *The decision maker must decide in writing if a complaint was submitted within the period set out in section 2.*
- (2) *If the complaint was submitted within the period, and once the decision maker has sufficient information to make a decision, the decision maker must ...*
- (b) *decide in writing if the respondent has, on a balance of probabilities, contravened the Code of Conduct set out in the schedule to the Royal Canadian Mounted Police Regulations, 2014.*

The ERC concluded that this case did not involve an appeal of a decision described in these provisions. The Appellant is not challenging a decision made pursuant to subsection 6(1). Further, the Appellant is not appealing a decision made pursuant to paragraph 6(2)(b). It is clear from the record that no decision regarding a contravention of the *Code of Conduct* was made. In fact, the Appellant's complaint was never investigated by the Force. Therefore, the appeal is not referable to the ERC.

ERC Recommendation: 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 to make any findings or recommendations.

NC-007 Medical Discharge

Between 2005 and 2015, the Appellant, who had a disability, had been intermittently absent from work. During that time, the Appellant had participated in various Return to Work (RTW) attempts. The Force attempted a final RTW process in 2016, during which the Appellant gradually increased his work hours over the course of several months and obtained positive feedback. While the final RTW process was ongoing, the Appellant was served with a Notice of Intent to Discharge (NOI) on the basis of having a disability. The NOI advised the Appellant of his right to respond to the NOI and to request a meeting with the Respondent, who would decide whether to discharge the Appellant. The Appellant sent the Respondent an email (Appellant's Email) requesting a meeting with the Respondent, to which were attached various documents which, the Appellant believed, included his response to the NOI (NOI submissions). The Appellant's Email and most of its attachments were received by the Respondent, who acknowledged receipt the next day. However, owing to a technological issue, the NOI submissions were not delivered via the Appellant's Email. Neither the Appellant nor the Respondent realized, at that time, that the NOI submissions were missing. The Respondent denied the Appellant's request for a meeting. Subsequently, on the basis of the material before him and the attachments to the Appellant's Email which had been transmitted, the Respondent issued an Order to Discharge the Appellant, with reasons attached to that order.

The Appellant appealed the Respondent's decision.

ERC Findings: The ERC observed that the key issue to be addressed was whether the Appellant's right to procedural fairness was

breached by the fact that the Respondent discharged the Appellant without considering the NOI submissions due to a technological issue in the transmission of the Appellant's Email. The *Commissioner's Standing Orders (CSOs) (Employment Requirements)* enshrine the right of a member to provide a written response to an NOI. In the ERC's view, the Appellant was owed a high degree of procedural fairness in this context given the impact of a discharge order and the significance of the proceedings to the Appellant.

The ERC found that the Appellant's Email contained clear indicators that NOI submissions, in addition to other supporting documents, were attached to it. While the Respondent's failure to realize that all attachments had not been provided with the Appellant's Email was inadvertent, he overlooked clear language in the Appellant's Email which specifically referred to attached NOI submissions. The Respondent's assumption that the Appellant had not provided NOI submissions denied the Appellant an important participatory right in a proceeding which had severe prejudicial consequences on him.

Given the void left by the Respondent's failure to address and respond to the NOI submissions in his decision, the ERC found that the Order to Discharge the Appellant was invalid and must be set aside.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he allow the appeal and remit the matter, with directions for rendering a new decision, to the Respondent or to another decision maker.

NC-008 Discharge / Referability

In February 2015, the Appellant forged an email exchange with a Crown prosecutor

and created electronic reports reflecting the exchange. The Appellant was charged criminally with forgery, pled guilty to the charge in criminal court and received a conditional discharge and four months' probation with conditions. The Force investigated the Appellant's conduct and brought four allegations of discreditable conduct and inaccurate reporting, contrary to the RCMP Code of Conduct. The Appellant admitted those allegations at a hearing before an RCMP conduct board (Board). On January 28, 2016, the Board found the allegations to be established and imposed conduct measures on the Appellant including a significant aggregate forfeiture of pay. However, the Board said it was "*not proportionate to the nature and circumstances of the contraventions to order the [Appellant's] loss of employment*". The Conduct Authority appealed the Board's imposition of conduct measures and sought the Appellant's dismissal from the Force. The ERC recently issued its findings and recommendations in that appeal. To the knowledge of the ERC, the Commissioner had not made a decision regarding the appeal as of the date of this report.

In early 2016, the RCMP initiated the revocation of the Appellant's RCMP reliability status ("security clearance") on the basis of the February 2015 misconduct. Subsequently, the Respondent issued an Order that the Appellant be discharged from the Force, effective October 20, 2016, on the basis that the Appellant no longer possessed a basic requirement for the carrying out of his duties, namely, the required security clearance.

The Appellant filed an appeal of the Order to Discharge. He argues that the Force is attempting to circumvent the conduct process and the January 28, 2016 decision of the Board by discharging the Appellant for the February 2015 misconduct through alternative means.

ERC Findings: The ERC considered whether the Appellant's appeal was referable to the ERC. Section 17 of the Royal Canadian Mounted Police Regulations, 2014 (2014 Regulations) sets out the types of non-conduct appeals that are to be referred to the ERC and provides as follows:

17. *Before an adjudicator, as defined in section 36 of the Commissioner's Standing Orders (Grievances and Appeals), who is seized of any of the following appeals considers the appeal, the adjudicator must, subject to section 50 of those Standing Orders, refer it to the Committee:*

- (a) *an appeal by a complainant of a written decision referred to in subsection 6(1) and paragraph 6(2) (b) of the Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints);*
- (b) *an appeal of a written decision revoking the appointment of a member under section 9.2 of the [Royal Canadian Mounted Police Act (Act or RCMP Act)];*
- (c) *an appeal of a written decision discharging or demoting a member under paragraph 20.2(1)(e) of the Act;*
- (d) *an appeal of a written decision discharging or demoting a member under paragraph 20.2(1)(g) of the Act on the following grounds:*
 - (i) *disability, as defined in the Canadian Human Rights Act,*
 - (ii) *being absent from duty without authorization or having left an assigned duty without authorization, or*
 - (iii) *conflict of interest;*
- (e) *an appeal of a written decision ordering the stoppage of a member's pay and allowances under paragraph 22(2)(b) of the Act.*

The Appellant is appealing the decision of the Respondent to discharge him from the Force pursuant to paragraph 20.2(1) (g) of the *RCMP Act* and subsection 6(e) of the *Commissioner's Standing Orders (Employment Requirements) (CSOs (Employment Requirements))*. Therefore, the appeal must fall within one of the paragraphs set forth in subsection 17(d) of the *2014 Regulations* in order to be referable to the ERC. Subsection 6(e) of the *CSOs (Employment Requirements)* permits the discharge of a member if he or she no longer possesses a basic requirement for the carrying out of the member's duties. One of the basic requirements for the carrying out of a member's duties is the requirement to have a security clearance (paragraph 2(1)(c) of the *CSOs (Employment Requirements)*). It is on this basis that the Force discharged the Appellant. Discharge of a member pursuant to subsection 6(e) of the *CSOs (Employment Requirements)* is not one of the grounds set forth in subsection 17(d) of the *2014 Regulations*. Therefore, the appeal is not referable to the ERC.

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

Former Legislation Cases:

D-133 Adjudication Board Decision

While off-duty, the Appellant used an RCMP credit card to purchase \$30.00 of gasoline for a personal vehicle. The Appellant's conduct resulted in one allegation of disgraceful conduct against the Appellant. The proceedings took place pursuant to the Force's *Early Resolution Discipline Process*. The parties presented an agreed statement of facts to the Board in which the Appellant admitted the Allegation. The parties

also made a joint submission on sanction proposing a reprimand and a forfeiture of 10 days of the Appellant's pay. The Board advised the parties that it was seriously considering dismissal and adjourned the hearing to give the parties the opportunity to file additional evidence. The hearing reconvened a few months later. The Appellant filed his treating psychologist's notes as evidence and called the divisional psychologist as an expert witness. The Appellant's treating psychologist did not testify. The Board rejected the joint submission and ordered the Appellant to resign from the Force within 14 days or be dismissed. The Appellant appealed the Board's decision on sanction.

ERC Findings: The ERC found that the Board improperly discounted the expert psychological evidence presented by the Appellant and, in so doing, made a manifest error. Further, the ERC found that the Board came to conclusions which engaged psychological expertise which the Board did not possess. The ERC found that, although the Board based its decision to reject the joint submission of the parties on the public interest test, it did not in fact apply the substance of the public interest test to the case before it and improperly disregarded the parties' joint submission on sanction. Finally, the ERC found that the Board did not lose its impartiality or create a reasonable apprehension of bias in researching precedent cases on its own initiative nor did the Appellant discharged his onus of establishing bias or a reasonable apprehension of bias.

ERC Recommendations: The ERC recommends that the appeal be allowed and that the Commissioner of the RCMP impose the sanction placed before the Board in the joint submission of the parties regarding sanction, namely a reprimand and a forfeiture of ten (10) days of the Appellant's pay.

G-642 Adjudication Board Decision

The Grievors are civilian members (C/M) who were working at a division headquarters. In July 2005, there was a decision made that C/Ms working overtime would no longer be compensated for mileage and meals taken during their overtime. In September 2010, this decision was reversed, but there was no mention of meal reimbursement. As a result, the Grievors inquired whether they could claim compensation retroactively to 2005 for meals in respect of their overtime shifts. On the same day, the Grievors were informed that they could claim the benefit "*if they were entitled to it*". On November 25, 2010, the Grievors were informed that their retroactive overtime mid-shift meal claims could not be approved as they did not have receipts in accordance with the Administration Manual II.4 *Pay and Allowances*, Appendix II-4-6 (Overtime Compensation). The Level I Adjudicator denied the grievance on the merits.

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(b), (c), (d), or (e), as those subsections all deal with subjects which are not at issue.

The other type of referable grievance, described in subsection 36(a) of the *Regulations*, involves matters 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 grievance also fell outside the ambit of subsection 36(a), as it was not based on the Force's interpretation and application of a government policy made to apply to members. Rather, it was

based on the Force's interpretation and application of its Administrative Manual on pay and allowances, which is strictly an internal RCMP policy. As neither party referenced a comparable, or otherwise relevant authority which fell within subsection 36(a), the grievance was not referable.

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

G-643 Relocation

Upon relocating from an isolated post, the Grievor learned, while the movers were packing his household good and effects (HHE), that his HHE would not be delivered to his home at his new post until two to three weeks after he was to take possession of his new home. He was also informed that he would not be entitled to the interim accommodations, meals and miscellaneous allowance (IAM&MA). The Grievor had furniture, a tractor and tools in long term storage (LTS). Those HHE were delivered the day after his arrival at his new residence. The Grievor tried to resolve the matter by explaining that his LTS did not contain HHE that would permit him and his wife to maintain a house. His LTS contained items that he had not needed for the last two years. The Respondent denied the Grievor's claim for IAM&MA as the Grievor would receive the bulk (in weight) of his HHE that were in LTS. Therefore, he would no longer be necessarily separated from his HHE, as required by the Integrated Relocation Program (IRP). The Grievor grieved this decision.

ERC Findings: The ERC found that the Grievor was necessarily separated from a substantial portion of his HHE during the period between departing the isolated post

until his HHE from that post were delivered, through no fault of his own. Therefore, the ERC found that the Grievor was entitled to IAM&MA pursuant to the 2007 IRP during that period and that the Respondent's decision to deny IAM&MA was inconsistent with the provisions of the 2007 IRP. The Force's argument that the Grievor had beds and appliances and could live in his new residence does not reflect the reality of the situation.

ERC Recommendation: The ERC recommends that the Commissioner allow the grievance.

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

The Grievor challenged the Force's refusal to reimburse him for the cost of interim accommodation, meals and the miscellaneous relocation allowance. The Grievor was transferred from an isolated post in Labrador where he had been living in a furnished Crown-owned residence. Within a few days of taking possession of his new residence, the Grievor received his household goods and effects that had been in long term storage for the past two years. The household goods and effects from his Labrador residence were not delivered until almost two weeks later. During this period, the Grievor and his wife stayed in a hotel. He had requested reimbursement of the cost of the interim accommodation but was denied as he had received the bulk of his household effects from long term storage.

Level I denied the grievance on the merits.

The Commissioner accepted the ERC's recommendations and found that the Grievor was eligible for the reimbursement. The grievance is allowed.

G-644 Isolated Posts

In mid-2009, the Grievor was transferred from a non-isolated post to an isolated post. At the time of his transfer, the Grievor was informed that the posting was entitled to vacation travel assistance (VTA). In late 2009, he had a conversation with the Detachment Non-Commissioned Officer (NCO) who informed the Grievor that he was not entitled to a VTA payment for fiscal year 2009-10 as he had not been at the isolated post for one year. VTA is provided for in the *Isolated Posts and Government Housing Directive (IPGHD)*. The Grievor did not claim a VTA payment for fiscal year 2009-2010 in reliance on the information provided by the NCO. In the spring of 2010, the Grievor learned through a colleague that eligibility for a VTA payment did not require that he be at the isolated post for one year, only three months. The Grievor verified this information by checking the policy. The Grievor claimed two VTA payments in May 2010: a VTA payment for fiscal year 2009-10 and a VTA payment for fiscal year 2010-11. His VTA claim for fiscal year 2009-10 was denied by the Respondent. The Grievor grieved this decision. The Level I Adjudicator denied the grievance as the policy required that VTA payments were limited to one in each fiscal year. The Grievor also had the responsibility to familiarize himself with applicable policies.

ERC Findings: The ERC found that it was the Grievor's responsibility to be familiar with policies applicable to his situation. The fact that he had erroneous information did not in itself negate his obligation to educate himself regarding the application of the *IPGHD*. The fact that individual members may be incorrect in their understanding of the provisions of a policy or directive, and may communicate those misunderstandings to other members, cannot be a basis on which to determine eligibility to benefits and allowances.

ERC Recommendation: The ERC recommends that the grievance be denied.

G-645 Relocation / Time Limits

The Grievor retired from the Force and relocated to a different province. He recalled the moving company used by the Force's relocation contractor (Mover) advising him that his effects would be shipped and delivered to his new home on June 11, 2012 with no storage fees. The Grievor arrived at his new home on June 8, 2012. His effects were delivered by the Mover on June 11, 2012. On July 19, 2012, he received an email from an RCMP Relocation Reviewer (RR) stating that the Mover had arrived in the Grievor's new locale on June 8, 2012 and stored his effects in the moving van until June 11 at a cost to be paid by the Grievor pursuant to a Force Relocation Policy. The Grievor provided the RR further details about his move. On August 3, 2012, the RR sent the new information to the Relocation Policy Centre, which was overseen by the Respondent. On August 16, 2012, the Grievor received an email from the RR indicating that the Policy Centre had decided the Grievor must pay the storage cost. The Grievor made informal attempts to have that decision overturned through October 2012.

On October 10, 2012, the Grievor grieved the decision that he was to pay a relocation storage expense. The Respondent questioned whether the grievance was timely, following which the parties made submissions. The Level I Adjudicator denied the grievance. She found that, regardless of whether the Grievor learned of the disputed decision on July 19 or August 16, 2012, the grievance was filed after the expiry of the 30 day statutory limitation period set forth in paragraph 31(2)(a) of the *RCMP Act*. She also found that an extension of that limitation period was not justified in the circumstances.

ERC Findings: The ERC agreed the Level I grievance was untimely. Pursuant to paragraph 31(2)(a) of the *RCMP Act*, a Level I grievance must be initiated within 30 days after the date on which the aggrieved member knew or reasonably should have known of the impugned decision. The Grievor knew about the impugned decision by August 16, 2012 and grieved it 55 days later. The ERC found that an extension of the Level I limitation period was not warranted. The ERC applied the four-factor test for extending time limits, established by the Federal Court of Canada. The ERC concluded that the Grievor did not possess a continuing intention to grieve and his explanations for the delay in grieving were not persuasive. The ERC sympathized with the Grievor's personal circumstances. However, it emphasized that the fact that the Grievor was unfamiliar with the grievance process and the fact that he initially pursued informal negotiations to resolve the matter did not satisfy the relevant test and did not constitute exceptional circumstances that prevented him from grieving within the statutory limitation period.

ERC Recommendation: The ERC recommends to the Commissioner of the RCMP that he deny the grievance on the basis that it was not presented at Level I within the 30 day time limit set forth in paragraph 31(2)(a) of the *RCMP Act*.

G-646 Harassment

At the time of the events relevant to the grievance, the Grievor had been posted to a detachment for five years. In May 2007, following the departure of the Non-Commissioned Officer in-charge (NCO i/c) of the detachment, the Grievor was placed in the position on an acting basis pending the arrival of a replacement. The new NCO i/c started his posting at the detachment in

October 2007. Issues between the Grievor and the NCO i/c arose soon after. The NCO i/c questioned some of the Grievor's overtime claims and changed the Grievor to day shifts as he was one of the detachment's NCOs. The Grievor filed a harassment complaint against the new NCO in May 2008. The Grievor started a new posting in June 2008. The complaint contained nine allegations. The Respondent rendered his decision 18 months after the Grievor had filed his complaint. He found the allegations were not established.

The Grievor filed a grievance against the decision, arguing that the harassment complaint process was untimely and the investigation was inadequate as only one third of the detachment had been interviewed and the questions put to the witnesses by the investigators were of a general nature. The Level I Adjudicator denied the grievance on the merits.

ERC Findings: The *TB Harassment Policy* states that the complaint process should normally be completed in six months or less. The provisions of AM XII.17, the RCMP harassment policy, require that complaints be dealt with in a timely manner and without undue delay and are consistent with the *TB Harassment Policy*. The six month period is not a mandatory requirement. However, the ERC found that the delay of 18 months in completing the harassment complaint process in this case was unacceptable and was inconsistent with the provisions of the *TB Harassment Policy* and AM XII.17, and with the guidance provided by the Federal Court. However, the ERC also found that the delays in the process did not further aggrieve the Grievor and did not compromise the integrity of the investigative process.

The ERC further found that the Grievor had not provided sufficient evidence or arguments to establish that the investigator's

failure to interview additional witnesses resulted in an investigation that omitted crucial evidence. Also, in light of the nature of the allegations and the responses of each of the witnesses to the questions posed by the investigators, the statements taken were adequate and the conduct and content of the witness interviews was procedurally fair.

Finally, the ERC found no evidence that the Force breached its obligations pursuant to AM XII.17 in allowing the Grievor to remain at the detachment for a short period of time following the filing of the Complaint as none of the allegations suggested an immediate and obvious concern for the safety or well-being of the Grievor that would warrant immediate intervention.

ERC Recommendation: The ERC recommends that the grievance be denied.

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-014 Conduct Authority Decision

(summarized in the January – March 2017 Communiqué) The RCMP conducted a Code of Conduct investigation into an allegation that the Appellant had engaged in disgraceful conduct by subjecting his spouse to ongoing domestic violence (Allegation). The Respondent found that the Allegation was established and imposed a number of conduct measures on the Appellant, including a forfeiture of 15 days' pay. The Appellant appealed the Respondent's decision on the Allegation. The Appellant submitted that

the Investigation Report was flawed; that the Respondent relied on inaccurate summaries of witness statements and did not carefully review all of the information before her; that the Respondent erred in some of her findings of fact and assessments of credibility, and that the Respondent's decision raised a reasonable apprehension of bias against the Appellant. The ERC recommended to the Commissioner of the RCMP that he dismiss the Appellant's appeal and confirm the Respondent's decision.

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

The Appellant is a constable in the RCMP who was married to a woman (R.L.) who was not a member of the RCMP. They were married for nine years and had 3 children. Their relationship was tumultuous – they experienced verbally, emotionally and physically abusive conflict which eventually lead to their separation. On September 17, 2014, R.L. attended an RCMP detachment and asked detachment personnel to serve the Appellant with a child custody document. While at the detachment R.L. alleged the Appellant had subjected her to domestic violence and raised other Code of Conduct issues.

The Appellant was investigated in relation to domestic violence through both criminal and Code of Conduct investigations. Other issues emerged in the course of the investigations resulting in more Code of Conduct investigations. The Appellant provided statements and subsequently made submissions to the Respondent relating to the domestic violence allegations during a Conduct Meeting.

The Respondent found that three of the four Code of Conduct allegations – including the one for domestic violence – had

been established. The Appellant is not appealing the conduct measures which were imposed or the other two Code of Conduct allegations which were established – he is only appealing the decision to establish the Code of Conduct allegation relating to domestic violence.

The Appellant argues that the Respondent arrived at her decision in a manner which was procedurally unfair and that her decision was clearly unreasonable. The Appellant claims that the investigation was biased against him and the Respondent did not adequately consider evidence which demonstrated that he was the victim of domestic violence and was not the aggressor in his relationship with R.L.

The Royal Canadian Mounted Police External Review Committee (ERC) reviewed this appeal and provided recommendations pursuant to s. 45.15 RCMP Act. The ERC held that some of the Appellant's submissions had not been presented to the Respondent and therefore could not be considered at the appeal stage. The Conduct Appeal Adjudicator adopted this recommendation.

The ERC also recommended that the Appeal be dismissed. The Conduct Appeal Adjudicator found that the Appellant's submissions failed to demonstrate that the Respondent's decision was clearly unreasonable or was arrived at in a manner which was procedurally unfair. The Conduct Appeal Adjudicator agreed with the ERC recommendation to dismiss the Appeal and partially agreed with the ERC analysis in support of that recommendation.

Former Legislation Cases:

D-130 **Adjudication Board Decision**

(summarized in the June – August 2016 Communiqué) 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. Four preliminary matters were initially addressed by the Board. 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. 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. The ERC recommended 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.

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

In a decision dated June 27, 2017, the Commissioner agreed with the ERC that the Adjudication Board breached the Appellant's right to a fair hearing due to the existence of a reasonable apprehension of bias. As a result, the decision of the Adjudication Board is invalid.

Generally, a finding of a breach of procedural fairness would result in the matter being returned to a different adjudication board for a fresh hearing. In this case, the Commissioner concluded that the circumstances would inevitably lead to the same result, both on the merits of a motion challenging the institutional independence of RCMP adjudication boards and on the merits of the allegations.

The Commissioner disagreed with the ERC that the Appellant should be afforded a new hearing and exercised his authority under s. 45.16(2)(c) of the RCMP Act. The Commissioner ordered the Appellant to resign, and in default of resigning within 14 days of being served with the decision, to be dismissed.

D-131 Adjudication Board Decision

(summarized in the September – December 2016 Communiqué) The Respondent responded to a 10-33 call, a call made when an officer's safety is in jeopardy. Upon arriving at the scene, the Respondent found two officers struggling to arrest an adult male suspect who was passively resisting the arrest. The Respondent promptly intervened by delivering knee strikes to the suspect, one of which connected with the suspect's head and subdued him, enabling the officers to make the arrest. The Appellant initiated disciplinary proceedings alleging that all three of the officers acted disgracefully, contrary to s. 39(1) of the *Code of Conduct*. The parties agreed to proceed via the "Early Resolution Discipline Process". The Adjudication Board (Board) held a brief video hearing during which each of the three officers admitted the allegation against him. The Appellant made one very short, general oral submission in relation to the Respondent's conduct. The Board concluded that the allegation against the Respondent was not established. The Appellant appealed the Board's decision. The ERC found that the Appellant failed to establish the grounds of appeal. The Board made no manifest and determinative error in its apprehension of the agreed facts set out in the Agreed Statement of Facts or in its consideration and weighing of the Respondent's admission of the allegation. The ERC recommended to the Commissioner of the RCMP that he dismiss the appeal and confirm the Board's decision pursuant to paragraph 45.16(2)(a) of the *RCMP Act*.

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

Appeal from a decision that an allegation of disgraceful conduct against the Respondent was not established. The Respondent answered a 10-33 call and found two members already struggling to subdue a passively resisting adult male. The Respondent intervened and administered knee strikes, one of which connected with the male's head. The Respondent admitted the allegation during a brief video hearing where the parties submitted an agreed statement of facts.

The Board found the allegation was not established based on the context in which the Respondent acted. The admission of the Respondent was not determinative, there was no evidence of a deliberate knee strike to the head, and the Respondent had to assume that the male was arrestable and had jeopardized officer safety based on the 10-33 call and what he observed when he arrived on scene. Allegations of disgraceful conduct against the other two members were established and were not appealed. The Board distinguished between their conduct and the Respondent's.

The Appellant argued that the Board misunderstood the agreed facts and believed that the male was actively resisting, considered the IMIM in its deliberations without inviting party submissions on the subject, and failed to place adequate weight on the Respondent's admission.

The Commissioner accepted the ERC's recommendation and found that the Appellant did not establish the grounds of appeal. There was no procedural error in considering the IMIM, the IMIM did not constitute new evidence, and there was no evidence that the Board relied on

the IMIM when making its decision. A Board is expected to use its experience and general policing knowledge when making assessments as long as it is not used to fill in a gap in the evidence or make an essential fact finding. The Respondent's admission was not determinative. The Board did not misunderstand the agreed facts, nor did it conclude the male was actively resisting. The decision was reasonable.

D-132 Adjudication Board Decision

(summarized in the January – March 2017 Communiqué) The Appellant left his place of work in an unmarked police vehicle. While the Appellant was making a stop at a shopping centre, several pieces of equipment were stolen from the vehicle. The veracity of the information contained in the statements and the reports provided by the Appellant to his supervisor were called into question. The Appellant was the subject of an allegation of disgraceful or disorderly conduct bringing the RCMP into disrepute in contravention of section 39(1) of the *Code of Conduct*. The Adjudication Board found that the allegation was substantiated and imposed a sanction of a reprimand and forfeiture of five days' pay. The ERC recommended that the appeal be denied.

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

[TRANSLATION]

The Appellant appealed a decision of the Adjudication Board imposing on him a sanction consisting of a reprimand and forfeiture of five days' pay for having contravened subsection 39(1) of the RCMP Regulations by neglecting to inform his superior that on March 11, 2010, the day RCMP equipment was stolen from an unmarked police vehicle the Appellant was

using, he had stopped at Costco with that vehicle to make some personal purchases.

The Appellant raised several errors of fact and law in the decision of the Adjudication Board, which had found that the allegation of disgraceful conduct had been established by the fact that the Appellant had wilfully made a false, misleading or inaccurate statement or report to his superior regarding the theft of the equipment.

The Commissioner accepted the findings and recommendations of the ERC. The Appellant did not satisfy the Commissioner that the Adjudication Board made a manifest and determinative error. The appeal is dismissed.

G-635 Legal Assistance at Public Expense

(summarized in the September – December 2016 Communiqué) The Force formally requested an external police service to conduct a *Code of Conduct* and a criminal investigation into the Grievor's actions. The Grievor requested and received authorization for Legal Assistance at Public Expense (LAPE) for an initial consultation with a lawyer and the criminal investigation phase pursuant to the *Treasury Board (TB) LAPE Policy*. The Grievor was charged with several criminal offences. The Grievor requested LAPE for the court appearance and trial phases of his criminal proceedings. The Respondent denied the Grievor's request for trial phase LAPE and terminated the Grievor's existing LAPE. The Grievor grieved the Respondent's decisions. The ERC found that the Respondent's decision was contrary to the *TB LAPE Policy*. The ERC recommended that the Level II Adjudicator allow the grievance. As corrective action, the ERC recommended reinstating the Grievor's previously approved LAPE retroactive to December 10, 2010 and authorizing LAPE for the trial phase of the Grievor's criminal proceedings.

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 terminate his legal assistance at public expense (LAPE) and to deny his LAPE request for his criminal trial. The Acting Commissioner agreed with the ERC's findings that the Respondent's decision is inconsistent with applicable policy. However, the Acting Commissioner disagreed with the ERC's recommended remedy. The Acting Commissioner suggested the Grievor presents a statement of account of the legal expenses issued by his private counsel, together with any relevant and necessary supporting documentation (which may include submissions) for presentation to the appropriate approval authority based on the extent of the legal fees incurred after December 8, 2010, to date.

G-636 Legal Assistance at Public Expense

(summarized in the January – March 2017 Communiqué) The Grievor was suspended with pay and later charged criminally with assault causing bodily harm. The Respondent authorized two requests for Legal Assistance at Public Expense (LAPE) for the Grievor's initial consultation with a lawyer and for court attendances. The Respondent subsequently terminated the Grievor's LAPE after a stoppage of pay and allowances order and decision was issued against the Grievor. The Grievor grieved the Respondent's LAPE termination decision, arguing that he met the eligibility criteria. The ERC recommended to the Commissioner of the RCMP that he allow the grievance on the merits and reinstate the Grievor's LAPE.

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 terminate his legal assistance at public expense ("LAPE"). The Commissioner disagreed with the ERC's findings that the Respondent's decision is inconsistent with applicable policy. However, the Commissioner concurred with the ERC that the new evidence tendered by the Grievor is sufficient to warrant a reconsideration of his eligibility for LAPE. The grievance is allowed.

The Commissioner suggested the Grievor present submissions together with a copy of the legal expenses incurred and any other relevant and necessary supporting documentation for consideration by the appropriate approval authority, subject to the advice of the Advisory Committee on Legal Assistance.

G-640 Isolated Posts

(summarized in the January – March 2017 Communiqué) The Grievor was offered a transfer to a limited duration isolated post at which he was assured by local supervisors that a Living Cost Differential (LCD) was available. However, unbeknownst to the Grievor, the Treasury Board Secretariat (TBS) cancelled the LCD for the isolated post days before his transfer, pursuant to its authority to do so under the *Isolated Posts Directive* (IPD). The Grievor did not receive an LCD at the isolated post. The Grievor learned later that the TBS had reinstated an LCD for the isolated post several years later. He promptly inquired into whether he could receive a retroactive LCD for his years of service at the isolated post. RCMP National Compensation Services responded that he was ineligible to receive the benefit. The Grievor initiated a grievance. 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 challenged the Force's refusal to pay him a retroactive living cost differential (LCD) for his years of service at an isolated limited duration post (LDP). He had received assurances from local supervisors prior to accepting the post that the LCD was available. He was not aware that the Treasury Board Secretariat (TBS) had cancelled the LCD for the post shortly before his transfer. In 2007, he learned that the LCD had been reinstated at the post. He requested retroactive LCD for his years there and was told that he was ineligible.

Level I denied the grievance on the merits.

The Commissioner accepted the ERC's recommendations and found that the Grievor was ineligible for the LCD, and the RCMP did not have the authority pay it. The RCMP was bound by the TBS decision.

G-641 Harassment

(summarized in the January – March 2017 Communiqué) The Grievor filed a complaint with the Canadian Human Rights Commission (CHRC) containing two allegations that she had been harassed by an Alleged Harasser. The Grievor did not file either an RCMP harassment complaint or a harassment grievance. The Respondent tasked an Investigator with conducting an internal harassment investigation. The Investigator provided his report to the Respondent which concluded that none of the witnesses corroborated the Grievor's allegations. The Respondent advised the Grievor that, as all of the witness statements refuted the harassment allegations, he concluded that the allegations were not substantiated. The Grievor challenged the Respondent's decision on the basis that the

Respondent was biased and in a conflict of interest and, therefore, should not have been the decision-maker. The ERC found that the Grievor had not established her 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:

The Grievor filed a grievance after the Respondent found the Grievor's harassment complaint allegations to be unsubstantiated. The Grievor asserted that the Respondent should not have been the decision-maker due to conflict of interest and bias. Three directions were issued at Level I on the collateral issue of disclosure. The Grievor maintained her request for a transcript of the recorded interview and argued that she could not present her submission until she received all of her requested disclosure. The Level I Adjudicator found the recorded interview to be sufficient and that a transcript was never created or under the control of the Force. Sadly, the Grievor passed away during the presentation of her grievance at Level II. The Commissioner agreed with the Chair of the RCMP External Review Committee that the Grievor failed to establish that the Respondent was in a conflict of interest or biased. The Commissioner denied the grievance.

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