



IN THIS ISSUE: PAGE

**ERC Findings and
Recommendations**

Under Current RCMP Act
Other Appeals 1

Under Former RCMP Act
Grievances 3

**Commissioner of the RCMP
Final Decisions**

Under Current RCMP Act
Other Appeals 5

Under Former RCMP Act
Grievances 6

Quick Reference Index 8

The RCMP External Review Committee (ERC) provides independent impartial reviews of appeals of certain internal RCMP decisions regarding labour and employment matters, pursuant to the *RCMP Act* and the *RCMP Regulations*. Following each case review, the ERC issues findings and recommendations for a final decision to the Commissioner of the RCMP or to the delegated decision-maker within the Force.

The kinds of cases reviewed by the ERC include:

- under the current *RCMP Act* - appeals of harassment investigation decisions, decisions to discharge an RCMP member (e.g. due to disability or unsatisfactory performance), decisions to dismiss an RCMP member or to impose a financial penalty for misconduct, and decisions to suspend a member's pay and allowances when the member has been suspended from duty; and,
- under the former *RCMP Act* (i.e. for cases commenced prior to changes made to the legislation in late 2014) - disciplinary appeals and appeals of initial decisions for a range of grievance matters (e.g. harassment, medical discharge, travel, relocation or isolated post expense claims).

This Communiqué provides summaries of the latest findings and recommendations issued by the ERC, as well as summaries of the final decisions taken within the RCMP for the cases that the ERC has recently reviewed. More information on the ERC and its case reviews can be found on-line at <http://www.erc-cee.gc.ca>.

OCTOBER TO DECEMBER 2018

communiqué

Findings and Recommendations

Between October and December 2018, the RCMP External Review Committee (ERC) issued the following findings and recommendations:

Current Legislation Cases:

NC-015 Stoppage of Pay and Allowances

In 2016, the Appellant was served with a Notice of Intent to Order a Stoppage of his pay and allowances (SPA). This Notice was based on information arising from several separate incidents:



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- A complaint that the Appellant had engaged in sexual misconduct by inappropriately touching and requesting personal favors from a female motorist during a roadside stop. The Appellant had already been suspended as a result of that incident and criminal charges had been laid;
- Other serious separate incidents involving the Appellant had subsequently been revealed, and which were still being investigated at the time the Notice of Intent was served. These allegations included: (i) a violent sexual assault; (ii) harassing and stalking two females; (iii) texting a female pictures of his penis and having consensual sex with her during a ride-along.

The Notice of Intent was accompanied by disclosure of the material the Respondent currently had. While this included a copy of the full statement of the female motorist, the Appellant was only provided with copies of summaries of statements obtained from the females involved in the most recent incidents still under investigation by a third party. Prior to providing his Response to the Notice of Intent, the Appellant requested disclosure of all materials available to the Respondent with respect to the most recent incidents “including the full statements” of witnesses. He also requested any statement and exculpatory photos that he or his wife had provided to police or to the third party. These requests were denied on the basis that the criminal investigation into the most recent incidents was being conducted by a third party and was still ongoing.

The Appellant addressed the SPA criteria, arguing that the circumstances surrounding the first incident were not exceptional. Finally, he urged that the SPA process had not been initiated in a timely fashion. He urged that if further disclosure were not provided, that the SPA only be assessed on the basis of the first incident. The Respondent ordered the Appellant’s pay and allowances be stopped, based on all allegations including the most recent incidents.

ERC Findings: The ERC found that the SPA decision maker needs to be satisfied that there is sufficient reliable information in the circumstances of the ongoing processes, to reach the decision about whether a SPA meets policy. The principle of a higher standard for professional discipline bodies stated in case

law does not apply to the SPA process because a member’s right to continue in policing is not at stake. The ERC thus found that, as the full statements and recordings of those statements were not available for the Respondent’s consideration, their non-disclosure was not a breach of procedural fairness.

The ERC found that the SPA was timely as the Respondent indicated that the key basis of the decision to issue the Notice of Intent was the totality of the circumstances, including the more recent allegations.

The ERC found that the Respondent had not reversed the presumption of innocence as she merely noted in response to his allegation that the non-disclosure of his and his wife’s statements and photographs precluded him from an opportunity to make a full reply, that such evidence had been generated by him and he was free to produce it in support of his arguments, but he did not. The ERC also found that previous decisions that considered obsolete criteria within the former SPA framework could not be helpful in rendering a decision within the present framework that uses criteria that have changed.

Lastly, the ERC found that the Respondent rendered a decision based on the information available at the time and this was not a manifest and determinative error and that the SPA decision was not clearly unreasonable given the evidence available.

ERC Recommendation: The ERC recommended that the Commissioner deny the appeal.

NC-016 Harassment

The Appellant refused to be reassigned to a new position within the specialized project he was assigned to, because it would result in him working alongside a member with whom he had a conflict. The Appellant was ultimately removed from the project by the project supervisor. The Appellant’s Staff Relations Representative (SRR) asked the Alleged Harasser, whose functions included overseeing the specialized project, to look into the circumstances surrounding the Appellant’s removal. The Alleged Harasser conducted a fact-finding exercise in the course of which he spoke to various individuals involved in the project. Although the Alleged Harasser

was given a timeline of events based on the Appellant's perspective, his attempts to meet in person with the Appellant were unsuccessful. The Alleged Harasser then wrote an email to the SRR explaining what he had learned as a result of his fact-finding. In this email, the Alleged Harasser referred to concerns raised by individuals regarding the Appellant's behavior and demeanor on the project. The Alleged Harasser also acknowledged that the timeline raised concerns regarding other members involved in the project which needed to be addressed. The Appellant subsequently lodged a harassment complaint (Complaint) against the Alleged Harasser, claiming that the Alleged Harasser had lacked the objectivity to conduct the fact-finding fairly. He further claimed that the Alleged Harasser's email to the SRR had depicted relevant events in a one-sided and prejudicial manner. Following an investigation, the Respondent concluded that the Complaint was not established (Decision). The Appellant lodged an appeal of the Decision. He claims that the investigation was too restrictive. He further maintains that the Respondent failed to properly address the Appellant's concerns regarding the Alleged Harasser's lack of objectivity and the allegedly one-sided and prejudicial email.

ERC Findings: The ERC disagreed with the Appellant's positions on appeal. The harassment investigation addressed the concerns which had been raised by the Appellant in his Complaint. As for an alleged lack of objectivity by the Alleged Harasser, the Respondent had properly noted that the fact-finding exercise, which was not a harassment investigation, had been undertaken within the Alleged Harasser's managerial authority. Within that context, the existence of supervisory relationships between the Alleged Harasser and individuals involved in the project, as well as the Alleged Harasser's awareness of grievances against him by the Appellant which he believed would be withdrawn, did not raise concerns of a conflict of interest. In addition, the Respondent had properly addressed the Appellant's concerns of prejudicial and one-sided fact-finding by the Alleged Harasser. In this regard, the Respondent found that the Alleged Harasser's email was a synopsis of what had transpired from the fact-finding, without fully understanding the Appellant's concerns given the inability to meet in person. While the Respondent might have directed further investigation into the circumstances

surrounding the Appellant's removal, this would not have assisted the Respondent in deciding whether the Alleged Harasser's conduct at the time of drafting his email to the SRR, based on the information he had, amounted to harassment.

ERC Recommendations: The ERC recommended to the Adjudicator that he or she dismiss the appeal and confirm the decision of the Respondent.

Former Legislation Cases:

G-655 Relocation

The Grievor received a cost relocation from one city to another. A few months later, he made a House Hunting Trip (HHT) to his new location of work. However, according to the *Integrated Relocation Program, Relocation Policy for the Royal Canadian Mounted Police (2009)* (IRP), the Grievor had to obtain prior approval for the HHT by the Relocation Reviewer, which he did not do. His claim for reimbursement of expenses related to his HHT was therefore denied, and he grieved the decision.

In his Level I submission, the Grievor acknowledged that he did not comply with the policy, because he did not know it. The Respondent stated that the denial of the claim for reimbursement was in accordance with the policy, that it was the Grievor's responsibility to know the policy before committing to spend public funds and that there were no exceptional circumstances to retroactively approve the Grievor's claim. The Level I Adjudicator denied the grievance, stating that, according to the IRP, the Grievor was responsible to know the legislation, regulations, policies and directives to which he was subject, including the obligation to seek prior authorization from the Relocation Reviewer to make a HHT. Like the Respondent, the Adjudicator concluded that there were no exceptional circumstances to subsequently approve the Grievor's claim for reimbursement.

ERC Findings: The ERC determined that it could address the grievance, that the Grievor had standing and that he had filed his grievance within the time limits. The ERC further found that the Grievor had submitted new evidence that was inadmissible at Level II. Concerning

the merits of the grievance, the ERC found that the Grievor was required to familiarize himself with the policies applicable to him and that the circumstances described in the facts were not sufficiently exceptional to merit subsequent approval of his claim for reimbursement.

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

G-656 Relocation

On June 27, 2008, the Grievor was issued a Transfer Notice for a cost relocation. On the same date, a relocation coordinator sent an email to the Grievor with relocation-related information. A relocation services representative contacted the Grievor the following week. They discussed the Grievor's interest in listing his property on the market and the commission rates charged by realtors. The representative confirmed that a more comprehensive consultation would occur at a later date. The representative then mailed the Grievor a package containing a copy of the Integrated Relocation Program policy (IRP) and an informational booklet entitled "*It's Your Move*".

The following day, the Grievor listed his property for sale. During a subsequent consultation which occurred several weeks later, the relocation services representative mentioned the Real Estate Incentive (REI). REI was an amount that could be paid by the RCMP to a relocating member as an incentive to retain a residence at the old place of duty, or as an incentive to sell the residence privately. The Grievor requested REI and took his residence off the market. His request was denied and he grieved this decision. The Grievor alleged that he was entitled to the REI benefit under applicable policy. Furthermore, he argued that the relocation coordinator and the relocation services representative had failed to properly advise him of the REI benefit in a timely manner.

The Level I Adjudicator denied the grievance. She referred to Section 1.08.2.b of the IRP which required the Grievor to choose between selling his residence and receiving REI within 15 working days of receipt of an appraisal. She further referred to the Note for the same section which indicated that the REI benefit was forfeited the moment a member placed

his residence on the market. The Level I Adjudicator observed that the Grievor was sufficiently informed of his options through the communications and materials he received from the relocation coordinator and the relocation services representative.

ERC Findings: The ERC found that, pursuant to Section 1.08.2.b of the IRP, the Grievor had forfeited his right to claim REI the moment he listed his residence on the market. The ERC further concluded that the relocation information provided to the Grievor was reasonable.

ERC's Recommendation: The ERC recommended that the Commissioner deny the grievance. In the interest of avoiding future misinterpretation, the ERC also recommended that the initial standardized communication from the relocation coordinator to relocating members remind the members of their obligation to be familiar with applicable policies.

G-657 Harassment

The Grievor was accused of harassment by one of his subordinates. The harassment complaint included two allegations which are relevant to this grievance. In the second allegation, the complainant alleged that the Grievor exceptionally demanded that he surrender his unit cell phone.

Following a harassment investigation, the Responsible Officer concluded that both allegations were founded. The Grievor grieved this decision, initially by sending a letter to his supervisor. He explained that he was busy attending numerous meetings during the period specified in the first allegation, and therefore could not have harassed the complainant. Regarding the second allegation, the Grievor submitted that he had acted reasonably within his managerial responsibilities. The Grievor also argued that the harassment investigator had a conflict of interest, because she had previously served as the complainant's supervisor.

The Level I Adjudicator denied the grievance. Her decision focused on whether the harassment investigator had a conflict of interest. The Adjudicator considered sections in Part XII.17 of the Administration Manual (AM XII.17) applicable to harassment investigations.

She concluded that such a past supervisory relationship did not create a conflict of interest, partly because she observed that the supervisory relationship in question had occurred seven years prior to the investigation. The Grievor accepted the Level I Adjudicator's decision on the issue of conflict of interest. However, he asserted that his submissions on the two specific allegations had been ignored at Level I.

ERC Findings: The ERC found that the letter the Grievor had sent to his supervisor amounted to a grievance presentation at Level I, because it contained all of the information required for a valid grievance under the *Commissioner's Standing Orders (Grievances)*.

The ERC observed that, pursuant to AM XII.17, a harassment complaint must be presented in writing and must provide the date and description of the incident in question. The ERC concluded that, since the dates associated with the first allegation were adjusted without notifying the Grievor, the resulting decision on the first allegation was inconsistent with the applicable law and policies.

The ERC found no contravention of applicable harassment authorities in the Responsible Officer's decision on the second allegation and that the record supported the Responsible Officer's conclusion that the Grievor's demand for the complainant's cell phone did not reflect a normal managerial practice at the time.

ERC's Recommendation: The ERC recommended that the Commissioner deny the grievance as it pertained to the second allegation. The ERC recommended that the Commissioner allow the grievance as it pertained to the first allegation. Since it would be impractical to reconsider the first allegation due to the lengthy passage of time, the ERC recommended that the Commissioner apologize to the Grievor for this error in the harassment investigation and decision-making process.

Commissioner of the RCMP's Final Decisions

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

Current Legislation Cases:

NC-014 Harassment/ Time Limits

(summarized in the April – September 2018 Communiqué) The Appellant filed a harassment complaint against several people including the Alleged Harasser in this case. An investigation was ordered by the Conduct Authority and an interim report was submitted to the parties, who had an opportunity to comment on this report. The investigators submitted their final report and the Respondent issued his decision, which determined that the complaint was ill-founded. The Appellant appealed this decision. The ERC recommended that the appeal be dismissed.

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

[TRANSLATION]

With her staff relations representative, whose name appears on Form 3919, Harassment Complaint, the Appellant submitted allegations of harassment against a sergeant, the principal Alleged Harasser, a superintendent, a staff sergeant, a corporal and a constable, all secondary alleged harassers. The Commanding Officer, decision maker and Respondent in this appeal, ordered an investigation, following which he concluded that the allegations against the corporal, now sergeant (Alleged Harasser), were unfounded.

The Appellant was served with the written decision on December 10, 2015. On January 7, 2016, the Appellant filed a Form 6439, Grievance Presentation, with the Office for the Coordination of Grievances and Appeals (OCGA) alleging that the Respondent [Translation] "did not recognize the behaviour

of a harassing nature as well as the injury [she] sustained in the course of [her] work at RCMP [...].” Prompted by the OCGA, she then filed a Form 6437, Statement of Appeal, claiming that the decision made by the Respondent was reached in a manner that contravened the applicable principles of procedural fairness and was clearly unreasonable.

The Adjudicator confirmed the recommendation of the RCMP External Review Committee, dismissing the appeal on the grounds that it was presented well after the expiry of the 14-day time limit, in contravention of the provisions of section 38 of the Commissioner’s Standing Orders (Grievances and Appeals), and that the circumstances alleged by the Appellant did not allow for the extension of the specified time limit.

Former Legislation Cases:

G-652 Medical Discharge

(summarized in the April – September 2018 Communiqué) The Respondent signed an Order that the Grievor be medically discharged from the RCMP. The Grievor grieved the Respondent’s decision. Sadly, the Grievor passed away during the Level II process. The ERC found that, while the Grievor’s death could potentially render the grievance moot, discretion should be exercised to hear the case, for two reasons. First, the determination of the date the Grievor’s employment ceased may have pension and estate implications. Second, the matter raises the important issue that the RCMP’s grievance process must be procedurally fair. The ERC recommended to the Commissioner of the RCMP that the grievance be allowed.

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

The Grievor challenged the Respondent’s decision to order the Grievor’s medical discharge from the Force on the basis of a disability. Following unsuccessful attempts to obtain Level I submissions on the merits from the Grievor’s Lawyer and the Grievor, the grievance was sent for adjudication. The Level I Adjudicator denied the grievance on its merits. At Level II, the Grievor argued that she was

denied procedural fairness at Level I. Sadly, the Grievor passed away during the proceedings at Level II. The ERC exercised its discretion to hear the grievance on the basis of a potential financial impact to the Grievor’s estate and the procedural fairness implications to the RCMP grievance process. The Commissioner found that the grievance was moot. The Commissioner did not exercise her discretion to decide the merits, given that there was no effective or practical remedy available. The Commissioner dismissed the grievance.

G-653 Medical Discharge/ Time Limits

(summarized in the April – September 2018 Communiqué) In January 2011, the Grievor received a Notice of Intention to Discharge her from the RCMP on the basis of a disability. The Notice stated that a Medical Board consisting of three doctors, one of whom to be nominated by the Grievor, would be appointed to ascertain the degree of her disability. The Grievor’s Lawyer advised the Force of the identity of the Grievor’s nominee in May 2011. Then, in June 2012, the Grievor’s Lawyer and the Force corresponded about the Medical Board process. The Grievor’s nominee later received a letter from the RCMP which outlined the mandate of the Medical Board. The Grievor obtained a copy of that letter in early October 2012. In late October 2012, the Grievor filed a grievance, disputing the decision to appoint the Medical Board. The Case Manager invited the Grievor to provide a submission on the preliminary issue of timeliness. However, no submission was received. The Level I Adjudicator ultimately denied the grievance, finding that it had been initiated after the expiration of the 30-day Level I statutory limitation period. The ERC found that the Level I grievance was untimely. 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 her office, is as follows:

The Grievor received a Notice of Intention to Discharge her from the RCMP on the basis of a disability in January 2011. In October 2012, the Grievor filed a grievance disputing the Respondent’s decision to appoint a Medical Board for the purposes of the medical discharge. The Grievor was invited to provide a submission on the preliminary issue of

timeliness but declined. The Level I Adjudicator denied the grievance, finding that the Grievor did not meet the 30-day statutory limitation period for presenting a grievance at Level I. The Grievor proceeded to Level II. Sadly, the Grievor passed away during the proceedings at Level II. The Commissioner agreed with the Interim Chair of the RCMP External Review Committee that the grievance was untimely and an extension to the statutory limitation period was not warranted. The Commissioner dismissed the grievance.

extension of the limitation period and recommended that the Commissioner deny the grievance. The Commissioner disagreed, finding that the Grievor presented an arguable case and granted a retroactive extension. The Commissioner determined that based on the circumstances, there effectively was no air service available to the Grievor for the medical travel. The Commissioner allowed the grievance and ordered the Grievor to be reimbursed the full kilometric rate claimed.

G-654 Travel/Time Limits

(summarized in the April – September 2018 Communiqué) The Grievor submitted an Expense Claim for travel and incidentals at the higher of two kilometric rates available in policy. The Respondent determined that the Grievor was only entitled to compensation at the lower kilometric rate. The Grievor grieved this decision. The Level I Adjudicator denied the grievance. A Certificate of Service indicated that the Grievor was served with a copy of the Level I decision on December 6, 2013. The Grievor presented his grievance at Level II on December 21, 2013 one day after the 14-day limitation period outlined in paragraph 31(2)(b) of the RCMP Act. The Grievor's sole explanation for the delay was based on his lack of adequate knowledge of the applicable grievance authorities, which, in the ERC's view, was not a reasonable justification for the delay. The ERC recommended that the Commissioner deny the grievance on the basis that it was not presented at Level II within the 14 day time limit set forth in paragraph 31(2)(b) of the RCMP Act.

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

The Grievor challenged the Respondent's decision to deny reimbursement at the full kilometric rate for the Grievor's non-elective medical travel expense claim under the Isolated Posts and Government Housing Directive (IPGHD). The Level I Adjudicator denied the grievance, finding that the Grievor failed to obtain the required pre-authorization for the travel. The External Review Committee (ERC) found that the Grievor filed his Level II grievance one day outside the statutory limitation period. The ERC determined that the circumstances did not support a retroactive

QUICK REFERENCE INDEX

UNDER CURRENT RCMP ACT

CONDUCT (DISCIPLINE) APPEALS

Appeal procedure	
- admissibility of new evidence	C-013
Conduct measure appeal	
- dismissal sought	C-017
- mitigating factors – failure to consider	C-010
- parity - appropriateness of the measure(s) imposed on the member	C-006, C-013
Discreditable conduct	
- domestic violence	C-014, C-016
- impaired driving	C-010
- making false statements	C-008
- other	C-006
Duties and responsibilities – failure to perform	
- failure to remain on duty	C-015, C-019
- mishandling of evidence	C-012
- unfit for duty	
o impaired (alcohol)	C-010
o unauthorized outside activities	C-013
Referability of the file to the ERC	C-001, C-002, C-003, C-004, C-005, C-009, C-018, C-020, C-021
Reporting	
- making false statements	C-007, C-008, C-011, C-013
Respect for Law and the Administration of Justice	
- failure to carry out a lawful order	C-013
Sufficiency of reasons	C-010, C-013

OTHER APPEALS (INCLUDING HARASSMENT, STOPPAGE OF PAY, ADMINISTRATIVE DISCHARGE)

Appeal procedure	
- time limit to file an appeal	NC-011, NC-013, NC-014
Discharge	
- disability	NC-007
- procedural fairness	
o right to be heard – consideration of member's submission	NC-007
Harassment complaint decision	
- harassment complaint was not established	NC-009, NC-010, NC-016
- time limit to file a complaint	NC-002, NC-003
Referability of the file to the ERC	NC-004, NC-006, NC-008, NC-012
Stoppage of pay and allowances	
- contravention (found or suspected)	
o federal statute	NC-001
- elements to prove	
o clear involvement	NC-001
o exceptional circumstances	NC-015
- procedural fairness	
o duty to disclose and consider evidence	NC-005, NC-015
o time limit to impose SPA order	NC-015

UNDER FORMER RCMP ACT

DISCIPLINARY MATTERS

Abuse of sick leave	D-060
Adverse drug reaction – causing misconduct	D-070
Agreed Statement of Fact (ASF)	D-098, D-103, D-117
Alcoholism	D-104, D-112, D-125
Amending an RCMP document	D-061
Appeal Procedure – opportunity to make submissions	D-127
Appropriation of goods seized during searches	D-065, D-066
Bar to formal discipline	D-059
Breach of trust and accountability	D-106, D-107, D-122, D-123, D-125
Charter of Rights and Freedoms - exclusion of evidence	D-129
CPIC – unauthorized enquiries	D-078, D-100
Criminal acquittal – impact on discipline process	D-101, D-135
Data transmission across Internet	D-093
Disclosure of protected information	D-076, D-081, D-092, D-100, D-109
Discrepancy in Board decision – written vs. oral	D-111
Disobeying a lawful order	D-087, D-108
Domestic violence - Battered Woman Syndrome (BWS)	D-051, D-067, D-072, D-101, D-108 D-110
Driving while impaired	D-062, D-063, D-115, D-129
Drugs	D-106
Duty of loyalty	D-076, D-081
Early Resolution Discipline Process (ERDP)	D-115, D-117, D-120, D-124
Errors of fact and law by Adjudication Board	D-078, D-084, D-085, D-086, D-088, D-089, D-090, D-097, D-103, D-117, D-119, D-125 D-126, D-128, D-130
Excessive force	D-064, D-069, D-083, D-084, D-124, D-131, D-135
Expert witness evidence	D-107, D-128
Fairness of hearing	D-074, D-085, D-086, D-126, D-127, D-130
False statements to a supervisor	D-132
Forgery	D-102
Fraud	D-054, D-107
Harassment - sexual harassment	D-091, D-111 D-053, D-071, D-074
Hindering an investigation	D-077, D-088, D-118
Improper use of AMEX card	D-120, D-133
Inappropriate conduct towards persons under 18	D-056, D-097
Inappropriate use of Mobile Work Stations (MWS)	D-095/D-096
Insubordination	D-114
Joint submission on sanction	D-061, D-126
Medical exam – refusal to undergo	D-087
Neglecting a duty	D-099, D-114
Off-duty conduct	D-073, D-112, D-125
Relationship with a complainant	D-098

Service revolver	
- storage	D-056, D-067
- use	D-063, D-072, D-073, D-080, D-117, D-134
Sexual misconduct	
- assault	D-068, D-121, D-125
- inappropriate touching	D-055, D-056
- on duty	D-113, D-118, D-126
- other	D-057, D-058
Statutory limitation period for initialing proceedings	D-052, D-054, D-075, D-082, D-098, D-100, D-105
Stay of proceedings	D-074, D-079, D-091, D-105, D-109
Theft	D-094, D-106, D-128, D-133
Uttering a threat	D-067, D-091, D-116
DISCHARGE AND DEMOTION	
Lack of "assistance, guidance and supervision" to remedy performance concerns	R-004
Repeated failure to perform duties	R-003, R-005, R-006
GRIEVANCE MATTERS	
Administrative discharge	
- improper appointment	G-272
- medical discharge	G-223, G-233, G-261, G-266, G-267, G-284-285, G-312, G-434, G-436, G-444, G-501, G-531, G-535, G-603, G-652
-Workforce Adjustment Directive (WFAD)	G-415
Bilingualism bonus	G-204, G-207, G-220, G-228, G-231, G-613
Charter of Rights and Freedoms	G-426, G-512
Classification	G-206, G-219, G-279, G-321, G-336, G-343
Complaints on internal investigations	G-491
Disclosure of personal information	G-208, G-209, G-210, G-447, G-448, G-459
Discrimination	
- gender	G-379, G-380, G-412, G-413, G-502, G-546
- mandatory retirement age	G-325, G-445
- marital status	G-546
- pay equity	G-441
- physical disability	G-427, G-477, G-478, G-512, G-614
- race	G-548
- sexual orientation	G-546
Duty to accommodate	G-423, G-513, G-542, G-614
Government housing	G-314, G-346, G-361, G-384
Harassment	G-216, G-235, G-237, G-251, G-253, G-268, G-270, G-287 to G-292, G-293, G-294, G-298, G-302, G-322 and G-323, G-324, G-326, G-347, G-350, G-351, G-352, G-354, G-355, G-356, G-362, G-367, G-377, G-378, G-382, G-397, G-402, G-403, G-405, G-407, G-410.1, G-410.2, G-410.3, G-414, G-416, G-417, G-420, G-424, G-429, G-430, G-431, G-433, G-437, G-438, G-439, G-440, G-453, G-474, G-479, G-482, G-483, G-489, G-493, G-499, G-504, G-506, G-507, G-508, G-510, G-511, G-514, G-515, G-518, G-519, G-520, G-521, G-538, G-539, G-540, G-543, G-551, G-552, G-553, G-554, G-558, G-560, G-570, G-571, G-594, G-595, G-596, G-616, G-628, G-629, G-630, G-631, G-632, G-633, G-641, G-646, G-657
Incomplete file	G-429, G-430
Isolated posts	G-255, G-269, G-365, G-368, G-369, G-384, G-449, G-450, G-451 G-460, G-461, G-462, G-463, G-469, G-470, G-473, G-480, G-484 G-495, G-496, G-497, G-498, G-559, G-561, G-597, G-600, G-606 G-640, G-644
Job sharing - buy-back pension	G-412, G-413

Language requirements	G-229, G-252, G-271, G-428, G-443, G-452, G-485
Leave without pay	G-414, G-547, G-555, G-624
Legal counsel at public expense	G-234, G-247, G-277, G-282, G-283, G-313, G-316, G-327, G-339, G-340, G-358, G-466, G-467, G-635, G-647, G-648, G-649, G-650
Living Accommodation Charges Directive (LACD)	G-214, G-249, G-273, G-361
Meal allowance	
- mid shift meals	G-375, G-572 to G-592, G-593, G-622
- other	G-238, G-265, G-303 to G-310, G-334, G-341, G-371, G-387, G-388, G-389, G-390, G-391, G-393, G-395, G-396, G-421
- short-term relocation	G-250
- travel of less than one day	G-256, G-257, G-258, G-259, G-376, G-408, G-500
- travel status – medical purposes	G-274
Occupational health & safety	G-264
- medical profile	G-516, G-531
Orders of dress	G-502
Overpayment recovery	G-455
Overtime	G-393, G-395, G-396, G-398, G-401, G-432, G-487
Premature grievance	G-275, G-276, G-315, G-317, G-424
Procedural errors	G-431, G-433, G-434, G-436, G-444, G-448, G-568, G-635
Referability of the matter to the ERC	G-213, G-224, G-236, G-241, G-243, G-245, G-264, G-344, G-370, G-399, G-400, G-435, G-456, G-490, G-525, G-526, G-536, G-545, G-564, G-565, G-566, G-567, G-598, G-601, G-602, G-617, G-618, G-619, G-620, G-623, G-625, G-626, G-634, G-637, G-638, G-639, G-642, G-651
Relocation	
- car rental	G-311, G-523
- depressed housing market	G-281, G-335, G-349
- distance within 40 km of worksite	G-215, G-383
- exceptional circumstances	G-604, G-605
- financial compensation	G-338, G-527, G-537, G-541, G-544, G-611
- Foreign Service Directive (FSD)	G-363, G-386, G-476
- Guaranteed Home Sales Plan (GHSP)	G-218, G-232, G-239, G-240.1, G-240.2, G-242, G-254
- Home Equity Assistance Plan (HEAP)	G-205, G-232, G-242, G-244, G-300, G-415 G-521, G-532
- House Hunting Trip (HHT)	G-212, G-357, G-522, G-655
- housing	G-509
- insurance coverage	G-211
- interim accommodation (ILMI)	G-240.1, G-240.2, G-341, G-360, G-364, G-372, G-422, G-643
- Integrated Relocation Program (IRP)	G-278, G-281, G-297, G-299, G-337, G-341, G-345 G-349, G-357, G-360, G-383, G-406, G-409, G-505, G-524 G-530, G-544, G-611, G-643, G-655, G-656
- lateral transfer	G-457, G-458
- legal fees	G-218, G-503
- mileage cost of moving vehicle	G-557
- pre-retirement relocation benefits	G-230
- promotional transfer	G-562
- retirement	G-329, G-330, G-331, G-332, G-369, G-373, G-446, G-475, G-608, G-645
- storage costs	G-222, G-246, G-505, G-559
- Temporary Dual Residence Assistance (TDRA)	G-263, G-494
- transfer allowance	G-383, G-411, G-442, G-465
- waiver	G-278, G-394, G-454

Self-funded Leave	G-404, G-414
Special Leave	G-466
Standing	G-009, G-032, G-037, G-053, G-059, G-077, G-081, G-098, G-119, G-125, G-149, G-194, G-203, G-211, G-322/323, G-350, G-374, G-376, G-378, G-398, G-405, G-419, G-426, G-436, G-437, G-438, G-439, G-440, G-443, G-444, G-445, G-447, G-459, G-469, G-471, G-483, G-484, G-499, G-520, G-523, G-530, G-531, G-535, G-538, G-539, G-540, G-543, G-560, G-570, G-571, G-603, G-621, G-627
Stoppage of pay and allowances	G-286, G-318, G-319, G-320, G-328, G-342, G-353, G-359 G-418, G-481, G-529, G-549, G-556
Time limits	G-214, G-218, G-221, G-222, G-223, G-228, G-247, G-248, G-250, G-277, G-333, G-337, G-341, G-347, G-348, G-357, G-365, G-366, G-370, G-371, G-372, G-375, G-376, G-392, G-397, G-419, G-420, G-432, G-464, G-465, G-471, G-477, G-486, G-488, G-494, G-517, G-518, G-519, G-520, G-528, G-532, G-533, G-534, G-537, G-546, G-559, G-560, G-562, G-563, G-569, G-607, G-609, G-610, G-613, G-615, G-645
Transfers	G-478, G-562
Travel directive	
- accommodations	G-301
- medical	G-486, G-492
- other	G-348, G-366, G-386, G-387, G-388, G-389, G-390 G-391, G-425
- private accommodation allowance	G-393, G-395, G-396, G-496, G-497, G-498, G-533, G-534, G-550, G-563, G-599, G-610 G-280
- separate accommodations	G-269, G-597
- spousal expenses for medical travel	G-217, G-385, G-467, G-468
- travel by a SRR	G-375, G-376
- TB vs RCMP policies	
- use of private vehicle	G-225, G-226, G-227, G-260, G-262, G-295, G-296 G-457, G-458, G-468, G-472, G-486, G-611
- vacation	G-449, G-450, G-451, G-460, G-461, G-462, G-463, G-469, G-470, G-473, G-480, G-484, G-561, G-612
- workplace	G-215, G-225, G-226, G-227, G-432, G-464, G-471, G-611