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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. 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>.

## Findings and Recommendations

Between January and March 2019, the RCMP External Review Committee (ERC) issued the following findings and recommendations:

### Current Legislation Cases:

#### Conduct Appeals

### C-022 Conduct Authority Decision

In August of 2014, the Appellant became the subject of an investigation into an unrelated allegation that he had breached the *Code of Conduct* (Original Allegation). Shortly after being advised of the Original Allegation, the Appellant began a period of medical leave, during which he took residence in a



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location outside his detachment area without first informing his commander. The Appellant also, while on medical leave, accessed RCMP information technology (IT) resources in order to gather information to defend himself against the Original Allegation. A further investigation into the Appellant's actions while on medical leave led to the discovery of written communications which had taken place between the Appellant and a police officer from another Force (other officer) earlier in 2014. In those communications, the Appellant had discussed aspects of a case he was investigating despite having been directed by his supervisor not to reach out to anyone outside the Force with respect to the case. A Conduct Meeting was convened in which five allegations were brought against the Appellant in relation to his actions while on medical leave and in relation to his communications with the other officer. The Respondent found all five allegations to be established and he imposed a reprimand, a financial penalty of 56 hours of pay and a forfeiture of 24 hours of annual leave.

The Appellant appealed the conduct measures imposed as well as the Respondent's findings with respect to three allegations: Allegation #1 which stipulated that by leaving his detachment area without permission while on medical leave, the Appellant had breached section 4.2 of the *Code of Conduct*; Allegation #2 which asserted that the Appellant had, while on medical leave, accessed RCMP IT resources to obtain unauthorized information contrary to section 4.6 of the *Code of Conduct*, and; Allegation #3 which alleged that the Appellant had failed to follow his supervisor's direction by continuing to communicate with the other officer regarding a case contrary to section 3.3 of the *Code of Conduct*. The Appellant did not appeal the Respondent's findings that the other two allegations (Allegations #4 and #5) had been established.

**ERC Findings:** The ERC found that the Respondent's failure to provide meaningful reasons regarding his disposition of the three allegations under appeal rendered his decision clearly unreasonable. It therefore addressed the findings that the Respondent should have made in regards to each. The ERC first addressed Allegation #1 and section 4.2 of the *Code of Conduct*, which requires members to be diligent in the performance of their duties and the carrying out of their responsibilities.

The ERC found that the allegation had not been established. While the Appellant had failed to obtain his commander's approval to leave his detachment area for more than 24 hours as required by policy, his failure in that regard was not accompanied by either an element of willfulness or a degree of neglect which would cross the threshold from a performance issue into a conduct matter.

The ERC found, however, that the record supported finding that Allegations #2 and #3 had been established. Allegation #2 alleged a breach of section 4.6 of the *Code of Conduct*, which requires members to use government-issued equipment and property only for authorized purposes. In the ERC's view, the Appellant's access to Force IT resources to defend himself against the Original Allegation, while on medical leave and therefore unfit for duty at the time, was not authorized as applicable policy required that such use be for an official police administrative, operational or duty-related purpose. Allegation #3 alleged a breach of section 3.3 of the *Code of Conduct* which requires members to carry out lawful orders and direction. The record supported a finding that the Appellant, in communicating with the other officer, had failed to comply with his supervisor's direction not to communicate with anyone outside the Force regarding a specific case.

The ERC found no reason to vary the conduct measures imposed. In the absence of submissions from the Appellant on the issue, it was not clear how the conduct measures should be varied even if Allegation #1 was not established. Considering only Allegations #4 and #5, found by the Respondent to be established and which had not been appealed, the conduct measures in place did not present an obvious departure from an established pattern of discipline. The ERC's finding that Allegations #2 and #3 were established further called into question varying the conduct measures imposed.

**ERC Recommendation:** The ERC recommended that the Commissioner of the RCMP find that Allegation #1 is not established and that Allegations #2 and #3 are established. The ERC further recommended that the Commissioner of the RCMP dismiss the appeal in respect of conduct measures and confirm the conduct measures imposed by the Respondent.

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

*The Appellant was a constable in a small municipality in a contract policing division. A Code of Conduct investigation was initiated into an allegation that the Appellant failed to properly respond to a domestic violence complaint (Original Allegation). Shortly after he learned that the Original Allegation was being investigated, the Appellant notified his commander that he was off duty sick (ODS).*

*Five subsequent Code of Conduct allegations came to light after the Appellant became ODS. Specifically, it was alleged that the Appellant: moved away from his detachment area while ODS without seeking approval from his Commander (Allegation 1); improperly accessed police databases while ODS to defend himself against the Original Allegation (Allegation 2); failed to follow his supervisor's direction in relation to a missing person file (Allegation 3); inappropriately sent file materials to an [other police service] (OPS) officer for a non-duty purpose (Allegation 4); and made derogatory comments about employees from the Appellant's detachment to the OPS officer (Allegation 5). During the investigation the Appellant's security status was suspended and the Appellant was suspended with pay.*

*Prior to the Conduct Meeting, the Appellant's suspension was lifted and his security status was reinstated subject to him meeting several conditions. The Appellant asked for disclosure of reports relating to both of these decisions both prior to the Conduct Meeting and during the Appeal process; the Respondent did not reply to the Appellant's request for disclosure prior to the Conduct Meeting. The Respondent found that all five Allegations were established and imposed global conduct measures of a reprimand, a forfeiture of 56 hours of pay, and a forfeiture of 24 hours of annual leave. The Appellant accepted the Respondent's decision in relation to Allegations 4 and 5, but the Appellant appealed the Respondent's findings for Allegations 1, 2, and 3 and the conduct measures which he imposed.*

*The RCMP External Review Committee (ERC) recommends that the Appeal of the findings for Allegations 1, 2, and 3 be allowed because it was procedurally unfair for the Respondent to make these findings without providing meaningful*

*reasons for that decision. In reviewing the record to determine what decision the Respondent should have rendered, the ERC recommended that Allegations 2 and 3 be established, but not Allegation 1. The Conduct Appeal Adjudicator agrees with these recommendations.*

*The ERC considered the Appellant's request for additional disclosure both as it related to a request for new evidence at the Appeal stage and from the perspective of how the Respondent should have addressed it in the first instance. The Conduct Appeal Adjudicator agreed with the ERC finding that the Appellant had failed to provide adequate reasons to justify his request for the documents during the investigation stage and therefore was not entitled to these documents.*

*The ERC found that the Appellant had failed to provide any persuasive argument on why the conduct measures were inappropriate. The ERC also noted that the conduct measures were within the range of measures for Allegations 4 and 5 alone (without even considering Allegations 2 and 3) and on that basis recommended that the Appeal of the conduct measures be dismissed. The Conduct Appeal Adjudicator agreed with the ERC recommendation, dismissed the Appeal on conduct measures, and confirmed the conduct measures imposed by the Respondent.*

## C-023 Conduct Authority Decision

In plain view of the Appellant, a handcuffed and possibly intoxicated suspect became involved in an interaction that ended with him landing head-first on a cell block floor and sustaining a wound to his face (Incident). Many documents were prepared in relation to the Incident. The Appellant authored a Report to Crown Counsel (RTCC) covering the arrest and included the Incident as well as handwritten police notes and a terse "Will Say" stating only that the Appellant was the lead investigator in the arrest of the suspect. The suspect's lawyer subsequently made a complaint to the Civilian Review and Complaints Commission for the RCMP, asserting in part that the Appellant and another member who was present during the Incident had authored misleading documents about the Incident.

Two allegations were brought against the Appellant, but one was ultimately deemed

unfounded. The remaining allegation (Allegation) alleged that the Appellant had breached section 8.1 of the *RCMP Code of Conduct* by providing false or inaccurate documentation on “*police reports*”, with regard to the Incident. The allegedly stained reports were repeatedly identified to the Appellant as the RTCC and the “*police report*”. Following an investigation, a Conduct Meeting was held at which the Appellant indicated, among other things, that she had written just one report involving the Incident, namely the RTCC. The Respondent concluded that the Allegation was established and consequently, imposed against the Appellant a reprimand and a multi-day forfeiture of pay.

The Appellant appealed the Respondent’s decision and conduct measures imposed. She made eight key arguments. However, the ERC addressed only those arguments regarding procedural fairness and, in particular, the argument that she authored just one police report (i.e. the RTCC) and did not know which other impugned report had been attributed to her.

**ERC Findings:** The ERC found that, by deciding that the Appellant prepared and included false or inaccurate information in a police report other than the RTCC, the Respondent fatally violated a principle of procedural fairness. The Allegation referred to “*police reports*” in the plural during the conduct process. Yet the record established that, although the Appellant drafted the RTCC, she neither wrote nor was aware of another impugned “*police report*” ascribed to her. A copy of such a report was not disclosed to the Appellant. At no time was it ever described to her by title, date, number, recipients, summary or otherwise. Such a report is not identified or identifiable in the record. While the Appellant authored two documents other than the RTCC that involved the RCMP’s handling of the suspect (i.e. her written police notes, and a concise “Will Say”), neither can reasonably be treated as a “*police report*” and nothing in the record suggests that they were viewed by the Respondent as reports containing false or misleading information. Accordingly, it was not possible for the Appellant to know the whole case against her or to present an informed defense. This violation of procedural fairness was serious, as the combination of monetary and professional consequences faced by the Appellant were significant.

**ERC Recommendation:** The ERC recommended that the Commissioner allow the Appellant’s appeal, find that the Allegation was not established and rescind the conduct measures imposed, thereby clearing the reprimand from the Appellant’s record and reimbursing any forfeited pay.

## **C-024** **Conduct Authority Decision**

A woman attended an RCMP detachment with her concern about a domestic dispute. The Appellant member was on duty at the detachment and met with her. The Appellant made no record of the meeting and later there was some disagreement about their conversation and whether the woman was fearful of her situation. The woman was visibly upset and told the Appellant that her common law spouse had stated “*get away from me before I strangle you*” and “*get out of my face before I punch you*.” The woman stated that she did not want her common law spouse charged, but that she did not know what to do. The Appellant asked her if she could stay at another residence and recommended that she return to the detachment if she felt threatened.

The woman was dissatisfied with the Appellant’s response and subsequently complained to other members at the detachment. A member verified that no file was created in the Police Reporting and Occurrence System (PROS) to record the conversation with the Appellant. The woman’s complaint was investigated and her common law spouse was subsequently charged with uttering threats. The Respondent ordered a *Code of Conduct* investigation against the Appellant, based on the Allegation that the Appellant knowingly failed to open a PROS file and to conduct investigations after receiving information of uttered threats, which contravened section 4.2 of the *RCMP Code of Conduct*.

Following an investigation, a Conduct Meeting was held. The Respondent concluded that the Allegation was established and imposed a reprimand, a forfeiture of two days’ pay and mandatory training. The Appellant appealed the Respondent’s decision and conduct measures. He argued that the Respondent erroneously focused on what the woman told other members when assessing what information the Appellant had when he decided not to investigate further. The

Appellant also argued that he conducted an investigation into the woman's complaint, and that the conduct measures imposed by the Respondent were improperly based partly on the Appellant's past discipline for spousal abuse. The Appellant requested a case conference. This request was denied by an Adjudicator's Recourse Advisor as premature.

**ERC Findings:** Since the Appellant made no objections to the Recourse Advisor's denial in his appeal submissions, the ERC disregarded this particular request for a case conference. However, the ERC observed that nothing in the applicable policy, regulations or statute limited an Adjudicator's discretion to hold a case conference in a conduct appeal prior to the ERC's review.

The ERC found that the Respondent properly focused on what the woman told the Appellant, and not on what she subsequently told other members at the detachment. After reviewing operational requirements for an investigation, the ERC concluded that the Respondent made no manifest and determinative error when she found that the Appellant failed to conduct an investigation. The ERC found that the Appellant provided nothing to support his contention that prior discipline against him was unfounded. Furthermore, the Respondent was entitled to consider the Appellant's prior discipline as an aggravating factor pursuant to Appendix 1-20 to Chapter XII.1 (Conduct) of the RCMP Administration Manual.

The ERC observed that when considering whether section 4.2 of the *Code of Conduct* had been breached, the Respondent had to determine whether the Appellant's conduct involved an element of willfulness or, alternatively, a degree of neglect that elevated the conduct from a mere performance issue to an issue of misconduct. The ERC concluded that the Respondent found an element of willfulness in the Appellant's actions.

**ERC Recommendation:** The ERC recommended that the Commissioner of the RCMP deny the Appeal, confirm the decision and confirm the conduct measures.

## Other Appeals

### NC-017 Discharge / Referability

The Appellant was found guilty of several criminal acts and detained in custody pending sentencing. After learning of the Appellant's criminal convictions, a Criminal Operations Officer prepared a Preliminary Recommendation that the Appellant be discharged from the Force by reason of having been convicted of an offence that is punishable by indictment. This Preliminary Recommendation was forwarded to the Employee Management Relations Officer (EMRO) who then made a formal Recommendation to the Respondent that the Appellant be discharged from the RCMP. The EMRO relied on the ground identified in the Preliminary Recommendation, as well as an additional ground of being absent from duty as the result of being detained in custody.

The Respondent had the Appellant served with a Notice of Intent to Discharge a Member. The Respondent then ordered that the Appellant be discharged pursuant to paragraph 20.2(1)(g) of the *RCMP Act*, which stipulates that a member may be discharged on grounds other than a contravention of a provision of the *Code of Conduct*. The Respondent relied on the following two grounds set out in section 6 of the *Commissioner's Standing Orders (Employment Requirements)* (CSO-ER): (i) being convicted of an offence that is punishable by indictment, and; (ii) being absent from duty as the result of being detained in custody or serving a period of imprisonment.

The Appellant filed an appeal of the Order to Discharge. The appeal was referred to the ERC.

**ERC Findings:** The ERC considered whether the Appellant's appeal was referable to the ERC pursuant to subsection 17(d) of the *RCMP Regulations (2014) (Regulations)*. Subsection 17(d) involves the appeal of a written decision to discharge or demote a member under paragraph 20.2(1)(g) of the *RCMP Act* on three specific grounds: disability, unauthorized absence (or departure) from duty or conflict of interest.

Paragraph 20.2(1)(g) of the *RCMP Act*, when read in conjunction with section 6 of the CSO-ER, enables the Commissioner to discharge or



demote a member on a number of different grounds, but only three of those grounds are contained in subsection 17(d) of the *Regulations*. As the discharge order in this matter did not relate to one of those three grounds, there was no requirement that the appeal be referred to the ERC.

**ERC Recommendation:** This non-conduct appeal is not a matter that must be referred to the ERC. As a result, the ERC did not review the appeal further or make a recommendation.

## **NC-018** Discharge / Referability

The Appellant was found guilty of a criminal act and was sentenced to a term of imprisonment.

A Preliminary Recommendation was made to the Employee Management Relations Officer (EMRO) that the Appellant be discharged from the Force by reason of having been convicted of an offence that is punishable by indictment. The EMRO then made a formal Recommendation to the Respondent that the Appellant be discharged from the RCMP, relying on the ground identified in the Preliminary Recommendation.

The Respondent had the Appellant served with a Notice of Intent to Discharge a Member (NOI). The Respondent then ordered that the Appellant be discharged pursuant to paragraph 20.2(1)(g) of the *RCMP Act*, which stipulates that a member may be discharged on grounds other than a contravention of a provision of the *Code of Conduct*. The Respondent relied on the following ground set out in section 6 of the *Commissioner's Standing Orders (Employment Requirements)* (CSO-ER): being convicted of an offence that is punishable by indictment.

The Appellant filed an appeal of the Order to Discharge. The appeal was referred to the ERC.

**ERC Findings:** The ERC considered whether the Appellant's appeal was referable to the ERC pursuant to subsection 17(d) of the *RCMP Regulations (2014) (Regulations)*. Subsection 17(d) involves the appeal of a written decision to discharge or demote a member under paragraph 20.2(1)(g) of the *RCMP Act* on three specific grounds: disability, unauthorized absence (or departure) from duty or conflict of interest.

Paragraph 20.2(1)(g) of the *RCMP Act*, when read in conjunction with section 6 of the CSO-ER, enables the Commissioner to discharge or demote a member on a number of different grounds, but only three of those grounds are contained in subsection 17(d) of the *Regulations*. As the discharge order in this matter did not relate to one of those three grounds, there was no requirement that the appeal be referred to the ERC.

**ERC Recommendation:** This non-conduct appeal is not a matter that must be referred to the ERC. As a result, the ERC did not review the appeal further or make a recommendation.

## **NC-019** Harassment / Time Limits

The Appellant was the subject of numerous harassment complaints from the complainant. In 2011, the Respondent found that none were substantiated. The complainant filed grievances regarding the Respondent's decisions in her harassment complaints. In 2015, within these grievance processes, the Respondent ordered an independent review of the complaints and investigations to determine whether the complainant's grievances could be resolved.

Upon learning, in November 2015, of the review, the Appellant filed a harassment complaint against the complainant for allegedly making false and frivolous complaints and subjecting him to "complaint terrorism". On September 13, 2016, the Respondent denied the complaint as it was not filed within one year of the last incident of alleged harassment. The Appellant also argued that the Respondent was in a conflict of interest because of her past involvement in the matters.

**ERC Findings:** The ERC determined that the Appellant's argument of conflict of interest on the part of the Respondent could not succeed as there was no indication that the Appellant raised his concern with the Respondent at the earliest opportunity, prior to this appeal.

On the issue of the timeliness of the harassment complaint, the ERC found that the fact that the independent review led the Appellant to conduct his review of the complaints more than one year after the last incident of alleged harassment does

not bring him within the limitation period of subsection 2(1) of the *CSO (Harassment)*. There was no new information revealed by the review; therefore, the Appellant had all the information necessary to make an informed decision as to whether to file a harassment complaint prior to learning of the review.

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

## NC-020 Harassment / Time Limits

The Appellant was the subject of numerous harassment complaints from the complainant. In 2011, the Respondent found that none were substantiated. The complainant filed grievances regarding the Respondent's decisions in her harassment complaints. In 2015, within these grievance processes, the Respondent ordered an independent review of the complaints and investigations to determine whether the complainant's grievances could be resolved. Around the same timeframe, the Appellant learned that the complainant had contacted the Canadian Human Rights Commission (CHRC) regarding a complaint she had made against him.

Upon learning, in November 2015, of the review and the CHRC process, the Appellant filed a harassment complaint against the complainant for allegedly making false and frivolous complaints and subjecting him to "complaint terrorism". On September 13, 2016, the Respondent denied the complaint, because it was not filed within one year of the last incident of alleged harassment, as there was neither new information provided to the Appellant nor a new complaint to the CHRC. The Appellant appealed this decision and argued that it was his review of all the processes that made him realize he was subjected to harassment. He also argued that the Respondent was in a conflict of interest because of her past involvement in the matters.

**ERC Findings:** The ERC determined that the Appellant's argument of conflict of interest on the part of the Respondent could not succeed as there was no indication that the Appellant raised his concern with the Respondent at the earliest opportunity, prior to this appeal.

On the issue of the timeliness of the harassment complaint, the ERC found that the fact that

the independent review and the CHRC process led the Appellant to conduct his review of the complaints more than one year after the last incident of alleged harassment does not bring him within the limitation period of subsection 2(1) of the *CSO (Harassment)*. There was no new information revealed by either process; therefore, the Appellant had all the information necessary to make an informed decision as to whether to file a harassment complaint when those complaints were made, prior to learning of the review and the CHRC involvement. Lastly, the ERC observed that even if the complainant had filed a new complaint with the CHRC, the Canadian Human Rights Act protects complainants from retaliation, like a harassment complaint in a separate process provided by a workplace.

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

## NC-021 Harassment / Time Limits

The Appellant was the subject of numerous harassment complaints from two members and their representative, the alleged harasser. In 2011, the Respondent found that none of the complaints were substantiated. The members filed grievances regarding the Respondent's decisions in their harassment complaints. In 2015, within these grievance processes, the Respondent ordered an independent review of the complaints and investigations to determine whether the members' grievances could be resolved. However, the alleged harasser was not a party to this review.

Upon learning, in November 2015, of the review, the Appellant filed a harassment complaint against the alleged harasser for allegedly providing false and frivolous statements to his clients against the Appellant and subjecting him to "complaint terrorism". On September 13, 2016, the Respondent denied the complaint as it was not filed within one year of the last incident of alleged harassment. The Appellant also argued that the Respondent was in a conflict of interest because of her past involvement in the matters.

**ERC Findings:** The ERC determined that the Appellant's argument of conflict of interest on the part of the Respondent could not succeed as there was no indication that the Appellant raised his concern with the Respondent at the

earliest opportunity, prior to this appeal.

On the issue of the timeliness of the harassment complaint, the ERC found that the fact that the independent review led the Appellant to conduct his review of the complaints more than one year after the last incident of alleged harassment does not bring him within the limitation period of subsection 2(1) of the *CSO (Harassment)*. There was no new information revealed by the review; therefore, the Appellant had all the information necessary to make an informed decision as to whether to file a harassment complaint prior to learning of the review.

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

## **NC-022** Harassment / Referability

The Appellant had filed harassment complaints against his three supervisors. This case involved the harassment complaint filed against one of the supervisors. After becoming aware of the complaint, the Respondent initiated a harassment investigation under Part IV of the *RCMP Act* which focused on the detachment as a whole and not just on the allegations raised by the Appellant. After receiving the investigation report, the Respondent concluded that the supervisor had indeed demonstrated harassing behaviours toward the employees of the detachment and imposed conduct measures against him.

The Appellant appealed this decision for three reasons: (1) the investigators were not impartial; (2) he had not received a preliminary report before the final decision was issued; and (3) the measures imposed did not correct the situation involving the expert medical opinions regarding him that were based on false information obtained from his supervisors.

**ERC Findings:** The ERC found that this case was not part of the type of files referable to the ERC. In this appeal, the Appellant challenged neither the Respondent's decision as to whether the complaint had been filed within the established time limit, nor the Respondent's decision as to whether the Alleged Harasser had contravened the *Code of Conduct*.

**ERC Recommendation:** This non-conduct appeal is not referable to the ERC. Accordingly, the

ERC did not review it further or make any recommendations.

## **NC-023** Harassment / Referability

The Appellant had filed harassment complaints against his three supervisors. This case involved the harassment complaint filed against one of the supervisors. After becoming aware of the complaint, the Respondent initiated a harassment investigation under Part IV of the *RCMP Act* which focused on the detachment as a whole and not just on the allegations raised by the Appellant. After receiving the investigation report, the Respondent concluded that the supervisor had indeed demonstrated harassing behaviours toward the employees of the detachment and imposed conduct measures against him.

The Appellant appealed this decision for three reasons: (1) the investigators were not impartial; (2) he had not received a preliminary report before the final decision was issued; and (3) the measures imposed did not correct the situation involving the expert medical opinions regarding him that were based on false information obtained from his supervisors.

**ERC Findings:** The ERC found that this case was not part of the type of files referable to the ERC. In this appeal, the Appellant challenged neither the Respondent's decision as to whether the complaint had been filed within the established time limit, nor the Respondent's decision as to whether the Alleged Harasser had contravened the *Code of Conduct*.

**ERC Recommendation:** This non-conduct appeal is not referable to the ERC. Accordingly, the ERC did not review it further or make any recommendations.

## **NC-024** Harassment / Referability

The Appellant had filed harassment complaints against his three supervisors. This case involved the harassment complaint filed against one of the supervisors. After becoming aware of the complaint, the Respondent initiated a harassment investigation under Part IV of the *RCMP Act* which focused on the detachment as a whole and not just on the allegations raised by the Appellant. After receiving



the investigation report, the Respondent concluded that the supervisor had indeed demonstrated harassing behaviours toward the employees of the detachment and imposed conduct measures against him.

The Appellant appealed this decision for three reasons: (1) the investigators were not impartial; (2) he had not received a preliminary report before the final decision was issued; and (3) the measures imposed did not correct the situation involving the expert medical opinions regarding him that were based on false information obtained from his supervisors.

**ERC Findings:** The ERC found that this case was not part of the type of files referable to the ERC. In this appeal, the Appellant challenged neither the Respondent's decision as to whether the complaint had been filed within the established time limit, nor the Respondent's decision as to whether the Alleged Harasser had contravened the *Code of Conduct*.

**ERC Recommendation:** This non-conduct appeal is not referable to the ERC. Accordingly, the ERC did not review it further or make any recommendations.

## Former Legislation Cases:

### Grievances

## G-658 Discrimination

The Grievor worked in the National Undercover Operations Program (UC Program). She was arrested and charged under the *Criminal Code*. The charges were later withdrawn by the Crown. An RCMP discipline Adjudication Board held an expedited hearing. The Grievor faced a single allegation of disgraceful conduct contrary to Section 39(1) of the *RCMP Regulations*. The Grievor emphasized that her conduct was influenced by a disability, but admitted to the allegation. Accordingly, the Adjudication Board found the allegation to be established. Pursuant to the parties' joint submission on sanction, the Adjudication Board imposed a reprimand, the forfeiture of ten days' pay, and a recommendation for professional counseling.

The Director of Covert Operations (Respondent) subsequently determined that the Grievor

should be removed from the UC Program. He stated that, due to its unique evidentiary credibility challenges, the program was limited to operators whose conduct and honesty were beyond reproach.

The Grievor grieved this decision. She emphasized the connection between her disability and her conduct which resulted in the criminal charges. Since she was now fit for duty as a member, the Grievor contended that she was also fit to return to the UC Program. The Grievor further referred to the anti-discrimination provisions in the *Canadian Human Rights Act (CHRA)*.

The Level I Adjudicator denied the grievance. She found that the Respondent was authorized to make managerial decisions based on the Grievor's disciplinary record. She further found that the Grievor had not satisfied the *prima facie* test for discrimination under the *CHRA* because the Grievor did not demonstrate that her disability was a factor in the adverse impact. The Grievor reiterated her position at Level II. The Grievor also argued that the Level I Adjudicator had a conflict of interest because the Adjudicator may have previously advised a Commanding Officer in relation to the Grievor's disciplinary proceedings.

**ERC Findings:** The ERC observed that the written decision from the Adjudication Board did not support the contention that the Level I Adjudicator was involved in the Grievor's disciplinary proceedings. The ERC found that a reasonable person viewing the matter realistically and practically would not conclude that there was a likelihood of bias.

The ERC found that the *McNeil* disclosure obligations could create unique evidentiary credibility challenges for undercover operators. As a result, the Grievor had not demonstrated why the Respondent's decision, which referred to these unique challenges, was inconsistent with applicable policy or legislation. The ERC further found that the Grievor had not satisfied the *prima facie* test for discrimination under the *CHRA*: the Respondent's decision to remove the Grievor from the UC program was related to her record of misconduct and not to her disability.

**ERC Recommendation:** The ERC recommended that the Commissioner deny the grievance at Level II.

## 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:

#### *Other Appeals*

### **NC-015** Stoppage of Pay and Allowances

(summarized in the October – December 2018 Communiqué) 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. The Respondent ordered the Appellant's pay and allowances be stopped, based on all allegations including the most recent incidents. 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. The ERC recommended that the Commissioner deny the appeal.

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

*The Appellant presented an appeal challenging the decision of the Commanding Officer (Respondent) to order the stoppage of pay and allowances pursuant to paragraph 22(2)(b) of the Royal Canadian Mounted Police Act, 1985, c R-10 following allegations brought against him involving sexual misconduct while on duty, harassment, and breach of trust.*

*The Appellant argued that the Respondent erred in failing to consider and disclose information considered relevant by the Appellant, in not serving the Notice of Intent in a timely manner, and in making errors of law with regard to the application of the presumption of innocence and stare decisis.*

*Finding no manifest or determinative error in the Respondent's decision, the ERC recommended the dismissal of the appeal.*

*The Commissioner accepted the ERC's recommendation and found that the Appellant did not establish that the Respondent made any reviewable errors. The Commissioner denied the appeal.*

### Former Legislation Cases:

#### *Grievances*

### **G-655** Relocation

(summarized in the October – December 2018 Communiqué) The Grievor's claim for reimbursement of expenses related to a House Hunting Trip was denied as he had not obtained prior approval contrary to policy. The Grievor grieved the decision to deny his request. The Grievor acknowledged that he did not comply with the policy, because he did not know it. 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. The ERC recommended that the grievance be denied.

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

[TRANSLATION]

*The Grievor challenged the Respondent's decision not to reimburse expenses for a House Hunting Trip. The ERC recommended that the grievance be denied on the basis that the Grievor had failed to demonstrate that the challenged decision was contrary to the applicable policy. The Commissioner agreed with the ERC recommendations and denied the grievance.*

## G-656 Relocation

*(summarized in the October – December 2018 Communiqué)* The Grievor listed his property for sale. The Grievor later requested a real estate incentive (REI), and took his residence off the market. His request was denied and he grieved this decision. The ERC found that 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. The ERC recommended that the Commissioner deny the grievance.

**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 the Grievor's claim for a real estate incentive under the Integrated Relocation Program (IRP) after he listed his residence for sale. The Level I adjudicator denied the grievance, finding that the Grievor failed to establish that the Respondent's decision was made contrary to the applicable policy. The External Review Committee (ERC) recommended that the grievance be dismissed. The Commissioner accepted the ERC's recommendation and dismissed the grievance.*

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