

Communiqué – April to June 2019

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/index-en.aspx>.

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Message from the Chairperson

On June 17, 2019, David Paradiso, Interim Chair, completed his duties and returned to his position as Deputy Ombudsperson for British Columbia following a one-year term as Interim Chairperson for the ERC. It has been an honour to have worked with Mr. Paradiso in my role of Vice-Chairperson of the ERC, since April 11, 2019. I have been appointed Chairperson for the ERC for a five year term starting on June 18, 2019.

Prior to that, I served with the Canadian Armed Forces for over 40 years, 30 of which were as a legal officer with the Office of the Judge Advocate General (JAG). I have served with JAG in a number of positions, reaching the rank of Lieutenant-Colonel and posted to various locations, including RMC Kingston, Ottawa, Petawawa, and Edmonton. I was also the Senior Legal Officer on deployment to Kandahar, Afghanistan.

I look forward to fulfilling my responsibilities as Chairperson of the ERC.

Charles Randall Smith
Chairperson

Findings and Recommendations

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

Current Legislation Cases:

Conduct Appeals

C-025 – Conduct Authority Decision The Appellant participated in a deployment to a foreign country. As part of his pre-deployment training, the Appellant signed an agreement pursuant to which he undertook not to engage in sexual or intimate relations with local citizens (local nationals) of that country for the duration of his mission. Near the end of the Appellant's deployment, the Appellant's roommate, A, informed a senior officer of the Canadian contingent (senior officer) that she believed the Appellant was intimately involved with a local national. A had discovered information by secretly looking at the Appellant's cell phone and reviewing text messages she believed to have been exchanged with the local national. A had initially been alerted to possible infidelity by the Appellant's girlfriend in Canada, who was A's personal friend and had become suspicious. Having been informed of A's suspicions, the senior officer met with the Appellant, who denied having an affair with a local national. The Appellant provided a statement to the senior officer to that effect. Upon the Appellant's return to Canada, a *Code of Conduct (Code)* investigation took place, as a result of which witness statements were obtained, documentary evidence was gathered and an investigation report was completed. A conduct meeting was convened before the Respondent, where the Appellant faced two allegations. The first allegation stipulated that the Appellant had failed to respect his pre-deployment undertaking by having an intimate relationship with a local national, thereby disobeying a lawful order contrary to s. 3.3 of the *Code*. A second allegation alleged that the Appellant had misled the senior officer by denying any intimate involvement with a local national contrary to section 8.1 of the *Code*. Following a conduct meeting, the Respondent found both allegations established and imposed conduct measures

consisting of a financial penalty totalling 64 hours of pay and a reprimand. The Appellant appealed the Respondent's findings on the allegations.

ERC Findings: The ERC found that the appeal had not been lodged within 14 days as required by section 22 of the *CSO (Grievances and Appeals)*. However, the ERC recommended that the Commissioner retroactively extend this time limit as the Appellant had shown an ongoing intention to appeal, there was a reasonable explanation for the brief delay, no prejudice would result and the appeal had merit.

With respect to the allegations, the ERC found that the Force had not established on a balance of probabilities that the Appellant had engaged in an intimate relationship with a local national. While the Appellant had received text messages which were of an intimate nature, there was insufficient evidence to determine whether they had been sent by a local national, and did not establish an intimate relationship.

ERC Recommendations: The ERC recommended to the Commissioner of the RCMP that she allow the appeal and make the finding that both allegations are not established.

Former Legislation Cases:

Grievances

G-659 – Relocation/Standing The Grievor was transferred from his original posting to his final posting. He moved to the area of his final posting but elected to retain ownership of his residence in his original posting. Around 1.5 years later, he retired from the Force and, at some point following his retirement, moved back to the area of his original posting. He later advised the Named Respondent, a Relocation Reviewer, that he wished to treat his move from his final posting back to his original posting as a "retirement relocation" to be partly funded by the RCMP. The Named Respondent replied that the Grievor did not qualify for a retirement relocation from his final posting to his original posting, explaining that the Grievor was not registered to obtain such a benefit and that he no longer resided in the area of his final posting.

The Grievor filed a Level I grievance, disputing the Named Respondent's refusal to authorize his request for a retirement relocation. It was proposed to the Grievor that he send a business case for the retirement relocation to the Departmental National Coordinator (DNC) who, in the view of the Named Respondent, was the correct responding party. The Grievor maintained that he was grieving the Named Respondent's refusal to allow his request for a retirement relocation. There is no business case in the record. The Level I Adjudicator denied the grievance, finding that the Grievor lacked standing to file it because he was retired and alternatively, that it was premature.

ERC Findings: The ERC found that the Grievor had standing to submit the grievance as he met the five conditions of standing set out in subsection 31(1) of the *RCMP Act*. First, despite being a retiree, he was a "member" given that his grievance involved an employment-related benefit to which he might be entitled. Second, he was aggrieved because the refusal to permit his request for a retirement relocation caused him prejudice. Third, while the Named Respondent might or might not have made a decision, she engaged in an act which went to the heart of the case. As a Relocation Reviewer and point of contact on relocation inquiries, she applied RCMP relocation policy in a way that precluded the approval of the Grievor's request for a retirement relocation at the time. Fourth, the impugned decision, act or omission of the Named Respondent clearly took place in the administration of the Force's affairs. Fifth, there was no available process under the

relevant legislation for resolving disputes over a member's entitlement to a retirement relocation.

The ERC also found that the grievance was not premature. There was a final disposition of the matter and the differences between the parties were not unframed or hypothetical. The Named Respondent replied to the Grievor's request for a retirement relocation by concluding that he did not qualify for one, thus closing the door to his request. Nothing about her conclusion suggests that it was an interim or provisional assessment, or that the matter was ambiguous. The Grievor grieved the Named Respondent's action, and persisted in his wish to pursue the grievance as it was originally framed. Although it was open to the Grievor to send the DNC a business case for a retirement relocation, any attempt to change the outcome of the situation by way of a separate authority with different decision-making power would have resulted in a new grievable decision.

ERC Recommendation: The ERC recommended that the Commissioner allow the grievance and ensure it is heard on the merits.

G-660 – Relocation While serving at an isolated post, the Grievor, who was single and childless, lived in Crown owned housing with insufficient room for his household goods and effects (HG&E), which were thus stored elsewhere within the province, at RCMP expense. He later accepted a transfer to an isolated post in another province, where he would again be living in Crown owned housing with insufficient room for his HG&E. The RCMP informed him that his HG&E would remain stored in their current location during that posting, at RCMP expense. He disliked this arrangement but agreed that it would have cost too much to move his HG&E to a storage unit near his new isolated post. After arriving at his new post, he bought a house in another city within the new province. He then submitted a business case requesting that his HG&E be moved to that house at public expense.

The Respondent refused to approve the business case for numerous reasons. Among the most prominent reasons were that the RCMP Integrated Relocation Program (IRP) permitted only the reimbursement of expenses "*directly attributable*" to a relocation, and the expense sought by the Grievor failed to satisfy that condition as his transfer to the new isolated post did not create a need to buy a house in another city within the new province. The Grievor grieved the Respondent's refusal of the business case. A Level I Adjudicator denied the grievance on its merits, finding that the Grievor failed to show on a balance of probabilities that the Respondent's decision not to approve a paid shipment of his HG&E was at odds with relevant authorities. The Grievor resubmitted his grievance at Level II. The matter was referred to the ERC for review.

ERC Findings: The ERC addressed the Grievor's four primary arguments at Level II. To begin, it dismissed his contention that he suffered discrimination on the basis of his marital status. The Grievor's failure to present a legal or policy framework, or any documentary evidence in support of this position meant he did not meet his onus of putting forth a *prima facie* case of discrimination. Second, the ERC did not agree that the Force should move the Grievor's HG&E to the new province on the basis that he anticipated his next post to be in the vicinity of his new house. The Grievor filed no evidence to support his position that he would be transferred to that region, the Respondent contested that position and the IRP does not authorize shipments of stored HG&E to speculative transfer locales. Third, the ERC rejected the Grievor's claim that he would "*waive*" the Crown from having to ship his HG&E out of his new house. The IRP neither permits, nor could be reasonably read as permitting, such a waiver in the circumstances. Fourth, the ERC disagreed that the principles and spirit of the IRP supported the Grievor's case. The IRP states that it was created as policy and not as permissive guidelines. It also states that the choices of members do not create entitlements, and that a reimbursable relocation expense must be directly attributable to a relocation as well as reasonable and justifiable. Ultimately, the ERC found that to interpret the

critical phrase “*relocated to a location where the HG&E could be repossessed*” in paragraph 14.05.2 of the IRP as being wide enough to capture both an isolated post where the Grievor was posted and a city where he bought a house, separated by many hundreds of kilometers and a body of water, would be to widen that phrase past the point of reasonableness.

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

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:

Conduct Appeals

C-023 – Conduct Authority Decision (*summarized in the January – March 2019 Communiqué*)
It was alleged that the Appellant had breached section 8.1 of the RCMP *Code of Conduct* by providing false or inaccurate documentation on a Report to Crown Counsel (RTCC) and a “*police report*”. 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. 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 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.

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

The Appellant arrested [Mr. X] for domestic assault and [Cst. Y] helped her process the prisoner. [Mr. X] – who was intoxicated and handcuffed behind his back – actively resisted the attempt to escort him to his cell. During the next four seconds (the Incident), [Mr. X] pulled away from [Cst. Y] and started to fall head-first towards the Appellant. All three individuals moved several steps in the direction that [Mr. X] was falling as the Appellant attempted to hold [Mr. X] up and [Cst. Y] attempted to pull him back. [Cst. Y] then got his feet in a solid stance and was able to pull [Mr. X] back however the momentum from this response resulted in [Mr. X] falling head-first onto the floor going in the opposite direction. The fall caused a bleeding gash on [Mr. X]’s forehead resulting in [Mr. X] being transported to the hospital by paramedics. [Mr. X] received stitches at the hospital and, after a CT scan revealed no medical concerns, was released by a doctor back into police custody so he could be lodged in cells for the night.

Criminal defence counsel for [Mr. X] obtained disclosure of video recordings of the Incident and lodged a complaint that the Appellant and [Cst. Y] had criminally assaulted his client and that their written descriptions of the Incident minimized their roles in [Mr. X] falling to the ground.

As a result of this complaint the Respondent initiated Code of Conduct investigations into whether [Cst. Y] and the Appellant had used excessive force and provided false or inaccurate documentation on their police reports. The investigation into the Appellant’s conduct included

providing a copy of investigation materials and video recordings of the Incident to a use of force expert who – after studying the four second Incident numerous times on a second-by-second basis – formed the opinion that [Cst. Y]'s actions were not consistent with RCMP policy. The use of force expert also noted that the description of the Incident by [Cst. Y]. (which was also reflected in the narrative used by the Appellant) was not consistent with his observations from the video recording in several respects. The Respondent found that the Appellant had not used excessive force, but that she had provided false or inaccurate documents in the Report to Crown Counsel (RTCC) and a police report. The Respondent imposed a reprimand and a forfeiture of 3 days of pay as conduct measures. The Appellant Appealed both the Respondent's findings and the conduct measures he imposed.

The RCMP External Review Committee (ERC) recommended that the Appeal of both the findings and the conduct measures be allowed because the Respondent's decision was rendered in a procedurally unfair manner by referring to both the RTCC and a police report, when the record did not demonstrate what police report the Respondent was referring to. The ERC recommended that the Conduct Appeal Adjudicator find that the Allegation was not established because the error could not be corrected by reconsidering the evidence in the record. On the same basis, the ERC recommended that the conduct measures be rescinded.

The Conduct Appeal Adjudicator agreed with the ERC that the Appeal should be allowed, but he found that the procedural fairness issue could be addressed by limiting his analysis and findings to the RTCC. On that basis the Conduct Appeal Adjudicator examined the record and found that the perceived inconsistencies between the CCTV recording and the Appellant's description of events did not establish the Code of Conduct Allegation. The Conduct Appeal Adjudicator also rescinded conduct measures which had been imposed on the Appellant.

Other Appeals

NC-016 – Harassment (summarized in the October – December 2018 Communiqué) The Appellant was removed from a 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, but was unable to speak to the Appellant. The Alleged Harasser then wrote an email to the SRR explaining what he had learned as a result of his fact-finding. 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. The ERC recommended to the Adjudicator that he or she dismiss the appeal and confirm the decision of the Respondent.

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

The Appellant, an investigator working on a specialized project, refused to be reassigned to a new position because it would result in him working for 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 (New Allegations) based on the Appellant's perspective, the Appellant refused to meet with the Alleged Harasser to provide the Appellant's perspective on the workplace conflict he was reporting. The Appellant's SRR asked the Alleged Harasser for a report on the outcome of the inquiries being made by the Alleged Harasser.

The Alleged Harasser made preliminary inquiries and then wrote an email to the Appellant's SRR explaining what he had learned as a result of his fact-finding. In this email, the Alleged Harasser stated that he had not made any final decisions as he had not had an opportunity to speak to the Appellant yet. The Alleged Harasser's email referred to concerns raised by individuals regarding the Appellant's behavior and demeanor on the project. The Alleged Harasser acknowledged that the Appellant's timeline of events raised concerns regarding other members involved in the project which still needed to be addressed. The Alleged Harasser asked the Appellant's SRR for clarification of several points so the Alleged Harasser could determine what administrative processes he needed to initiate to address the Appellant's concerns.

The Appellant subsequently lodged a harassment complaint against the Alleged Harasser, claiming that the Alleged Harasser had improperly conducted a harassment investigation and lacked the objectivity to do so. He further claimed that the Alleged Harasser's email to the SRR had caused the Appellant harm as it depicted relevant events in a one-sided and prejudicial manner. Following an investigation, the Respondent found that the Alleged Harasser's inquiries were not a harassment investigation, they were a preliminary step which - as a manager - the Alleged Harasser was required to take in order to determine how to address the concerns which the Appellant had raised. As the Alleged Harasser's actions reflected his obligations as a manager, the Respondent concluded that the harassment complaint was not established (Decision).

The Appellant lodged an appeal of the Decision. He claims that the scope of 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 which was sent to the Appellant's SRR. The ERC found that the investigation reflected the substance of the Appellant's harassment complaint. The ERC also found that the Appellant failed to demonstrate that the Respondent's decision was clearly unreasonable or rendered in a manner which was procedurally unfair.

The Adjudicator agreed with the ERC's findings. The Appeal was dismissed.

NC-019 – Harassment / Time Limits (summarized in the January – March 2019 Communiqué)

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 of the review, the Appellant filed a harassment complaint against the complainant. 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*). 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 was the subject of numerous harassment complaints from the complainant [Sergeant B]. In 2011, the Respondent found that none were substantiated. The complainant [Sergeant B] 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 [Sergeant B's] grievances could be resolved.

Upon learning, in November 2015, of the review, the Appellant filed a harassment complaint against the complainant [Sergeant B] 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.

The ERC examined the reasonableness of the decision and recommended the Appeal be dismissed, agreeing with the Respondent that the complaint exceeded the one-year limitation period contrary to subsection 2(1) of the Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints) and finding the Respondent "made no manifest or determinative error". On Appeal, the Appellant also argued that the Respondent should have recused herself, contending she was in a conflict of interest due to her past and present active involvement in the complaint and grievance processes. The ERC deemed the objection untimely as there "is no indication that the Appellant raised his concern with the Respondent prior to this Appeal".

The Appeal Adjudicator found that, before the impugned decision was made, the Appellant had ample opportunity to object to the Respondent being the Decision-maker. Agreeing with the ERC, the Adjudicator dismissed the Appellant's objection. In addition, the Adjudicator deemed the Appellant's concern to have become moot since a new Commanding Officer has assumed command of "[X]" Division thereby becoming the Decision-maker for the Appellant's harassment complaints.

However, the Appeal Adjudicator allowed the Appeal having found that the Respondent had contravened the applicable principles of procedural fairness by dismissing the complaint on timeliness without first providing the Complainant/Appellant the opportunity to be heard on the issue, or on the additional documents placed before the Respondent. This matter is remitted to the new Commanding Officer "[X]" Division who, after obtaining a written submission from the Complainant/Appellant, will render a new decision on the timeliness of the complaint.

NC-020 – Harassment / Time Limits (summarized in the January – March 2019 Communiqué)

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 of the review and CHRC process, the Appellant filed a harassment complaint against the complainant. 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). 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 was the subject of numerous harassment complaints from the complainant [Constable C]. In 2011, the Respondent found that none were substantiated. The complainant [Constable C] 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 [Constable C's] grievances could be resolved. Around the same timeframe, the Appellant learned that the complainant [Constable C] 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 [Constable C] 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.

The ERC examined the reasonableness of the decision and recommended the Appeal be dismissed, agreeing with the Respondent that the complaint exceeded the one-year limitation period contrary to subsection 2(1) of the Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints) and finding the Respondent "made no manifest or determinative error". On Appeal, the Appellant also argued that the Respondent should have recused herself, contending she was in a conflict of interest due to her past and present active involvement in the complaint and grievance processes. The ERC deemed the objection untimely as there "is no indication that the Appellant raised his concern with the Respondent prior to this Appeal".

The Appeal Adjudicator found that, before the impugned decision was made, the Appellant had ample opportunity to object to the Respondent being the Decision-maker. Agreeing with the ERC, the Adjudicator dismissed the Appellant's objection. In addition, the Adjudicator deemed the Appellant's concern to have become moot since a new Commanding Officer has assumed command of "[X]" Division thereby becoming the Decision-maker for the Appellant's harassment complaints.

However, the Appeal Adjudicator allowed the Appeal having found that the Respondent had contravened the applicable principles of procedural fairness by dismissing the complaint on timeliness without first providing the Complainant/Appellant the opportunity to be heard on the issue, or on the additional documents placed before the Respondent. This matter is remitted to the new Commanding Officer "[X]" Division who, after obtaining a written submission from the Complainant/Appellant, will render a new decision on the timeliness of the complaint.

NC-021 – Harassment / Time Limits (summarized in the January – March 2019 Communiqué)

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 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 of the review, the Appellant filed a harassment complaint against the alleged harasser. 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*). 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 was the subject of numerous harassment complaints from two members [Sergeant B and Constable C] and their representative, the alleged harasser [Staff Sergeant A]. 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 harassment 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.

The ERC examined the reasonableness of the decision and recommended the Appeal be dismissed, agreeing with the Respondent that the complaint exceeded the one-year limitation period contrary to subsection 2(1) of the Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints) and finding the Respondent "made no manifest or determinative error". On Appeal, the Appellant also argued that the Respondent should have recused herself, contending she was in a conflict of interest due to her past and present active involvement in the complaint and grievance processes. The ERC deemed the objection untimely as there "is no indication that the Appellant raised his concern with the Respondent prior to this Appeal".

The Appeal Adjudicator found that, before the impugned decision was made, the Appellant had ample opportunity to object to the Respondent being the Decision-maker. Agreeing with the ERC, the Adjudicator dismissed the Appellant's objection. In addition, the Adjudicator deemed the Appellant's concern to have become moot since a new Commanding Officer has assumed command of "[X]" Division thereby becoming the Decision-maker for the Appellant's harassment complaints.

However, the Appeal Adjudicator allowed the Appeal having found that the Respondent had contravened the applicable principles of procedural fairness by dismissing the complaint on timeliness without first providing the Complainant/Appellant the opportunity to be heard on the issue, or on the additional documents placed before the Respondent. This matter is remitted to the new Commanding Officer "[X]" Division who, after obtaining a written submission from the Complainant/Appellant, will render a new decision on the timeliness of the complaint.

Former Legislation Cases:

Grievances

G-657 – Harassment (*summarized in the October – December 2018 Communiqué*) The Grievor was accused of harassment by one of his subordinates. Following a harassment investigation, the Responsible Officer concluded that two allegations were founded. The Grievor grieved this decision. 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 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. 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.

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

The Grievor challenged a decision by the Respondent concerning a harassment complaint against the Grievor. The Commissioner accepts the ERC's findings that the Respondent's decision with respect to Allegation 2 was inconsistent with harassment authorities. The Commissioner further agrees with the ERC's finding that the Respondent's decision pertaining to Allegation 8 was consistent with applicable law and policies. The grievance is allowed in part.

G-658 – Discrimination (*summarized in the January – March 2019 Communiqué*) The Grievor worked in the National Undercover Operations Program (UC Program). She was arrested and charged under the *Criminal Code*. 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. The 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. The ERC found that the Grievor had not demonstrated why the Respondent's decision was inconsistent with applicable policy or legislation. The ERC recommended that the Commissioner deny the grievance at Level II.

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

The Grievor was arrested and charged for theft. The criminal charges were later withdrawn. The Grievor admitted to disgraceful conduct contrary to subsection 39(1) of the RCMP Regulations before an Adjudication Board. The Respondent then removed the Grievor from the National Undercover Operations Program due to the unique evidentiary requirements of its operators testifying in court. The Grievor argued that the decision was discriminatory against her disability,

which was the underlying cause of her behaviour that led to her misconduct. The Level I Adjudicator denied the grievance, finding that the Grievor failed to establish that the Respondent's decision was prima facie discriminatory. The External Review Committee (ERC) found that the Grievor did not demonstrate that the Respondent's decision was inconsistent with applicable policy or legislation and found that the Grievor had not satisfied the prima facie test for discrimination. The ERC recommended that the Commissioner deny the grievance. The Commissioner accepted the recommendation and denied the grievance.