Communiqué – July to September 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.

In this issue:

Findings and Recommendations

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

Current Legislation Cases:

Conduct Appeals

C-026 – Conduct Authority Decision The Appellant attended a section of train tracks at which a young man had been injured in a rail collision. The RCMP decided that the scene should be ceded to the Railway Police as they had jurisdiction over the train tracks. Before leaving the scene, a superior directed the Appellant, as the NCO, to personally hand the scene to the Railway Police when they arrived. The Appellant later stood by while a junior member ceded the scene. Weeks later, the Appellant responded to an Assault complaint where another young man had sustained serious injuries. After calling an ambulance, making some queries and having photos taken, he allowed a resident to wash blood off the ground where the victim had been found. He did not secure the scene and later agreed he could have brought in Forensic Services prior to releasing the scene.

The Force undertook a *Code of Conduct* investigation into allegations that the Appellant had not been diligent in following a direction at the scene of a rail collision, or in investigating the Assault complaint, contrary to section 4.2 of the *Code of Conduct*. The Respondent found that the two allegations were established on a balance of probabilities standard and imposed on the Appellant conduct measures including a forfeiture of two days of pay and a direction to work under close supervision for up to one year. The Appellant furnished an appeal. He submits that some of the Respondent's findings on the two allegations are clearly unreasonable, and that the Respondent cited certain unsubstantiated or improper factors in imposing conduct measures. In support of his appeal, the Appellant supplied for the first time copies of several different records.

ERC Findings: The ERC found that the several new records offered by the Appellant on appeal were inadmissible. None of those records were provided to the Respondent, despite pre-dating the decision by months. Moreover, the Appellant did not say why he could not have given them to the Respondent even though they were known by and seemingly obtainable for the Appellant.

The ERC then held that none of the Appellant's grounds of appeal on the allegations revealed a clearly unreasonable decision. Sets of reasons supplied in the decision, as a whole, necessarily implied that the Respondent considered and applied the test for ascertaining a breach of section 4.2 of the *Code of Conduct*. The Respondent did not misunderstand, or misjudge, the evidence. Additionally, while the Appellant was entitled to disagree with the Respondent's weighting of the evidence, absent a manifest and determinative error, it is not the Commissioner's role on appeal to assess if the Respondent erred simply by performing the function with which he was tasked.

Although the ERC expressed concerns with the Respondent's reliance upon certain aggravating factors which could have been made clearer, it found that the record seemed to clarify them and that, regardless of the possible ambiguities, the conduct measures imposed were fair,

reasonable and supported, taking into consideration the facts and the Conduct Measures Guide.

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

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

The Appellant was subject of an investigation in which it was found that he contravened section 4.2 of the *RCMP Code of Conduct*. The Respondent imposed conduct measures of close supervision for a period of no longer than one year and forfeiture of two days of pay.

The Appellant presented his appeal, arguing that the Respondent's decision was procedurally unfair, based on an error of law, and was clearly unreasonable.

The adjudicator determined that the Respondent's decision was clearly unreasonable, finding in regard to Allegation 1 that the evidence did not support his conclusion, and in relation to Allegation 2, that the Respondent failed to consider how the Appellant's behavior crossed the threshold from a performance issue to misconduct. Therefore, the Respondent's decision was set aside, and in accordance with paragraph 45.16(2)(b) of the *RCMP Act*, the adjudicator made the finding that, in her opinion, the conduct authority should have made. It was determined that the evidence was insufficient to demonstrate that the behavior crossed the line from performance to misconduct. Therefore, the allegations that the Appellant contravened section 4.2 of the *Code of Conduct* by failing to follow direction, or failing to properly investigate a complaint of assault causing bodily harm were not established. As a result, the conduct measures were rescinded.

C-027 – Conduct Board Decision The member (Respondent) responded to a 911 call regarding individuals whose vehicle had broken down on the side of the road. When the Respondent and another member arrived at the scene, two underage youths fled in the forest nearby where they were soon found. The Respondent seized approximately 24 bottles of beer in a cooler after issuing a ticket for unlawful possession of alcohol against one of the underage youth. On his next shift, instead of disposing of the alcohol as per policy, the Respondent gave it to the firefighters across from the detachment as a gesture of "esprit de corps". The Respondent then created a misleading entry in the Police Reporting Occurrence System and wrote an email falsely stating the alcohol had been disposed of locally.

A *Code of Conduct* process was initiated where the Respondent faced five allegations of discreditable conduct related to the incident. The Conduct Authority (Appellant) was seeking the Respondent's dismissal. After a contested hearing, all five allegations were found to be established by the Conduct Board (Board). Evidence was presented on conduct measures. The Board found that the Respondent's contraventions did not warrant dismissal and imposed a financial penalty of 35 days'. The Appellant appealed the conduct measures and requested the Respondent be dismissed.

ERC Findings: The ERC found that the Board did not err by finding that although there were *McNeil* implications, it remained to be seen whether the Force's ability to employ the Respondent was compromised. The ERC also found that the Board did not commit a manifest and determinative error in finding that the risk of recurrent behavior by the Respondent was minimal as the Respondent provided an evidentiary basis upon which the Board could draw its conclusion. The ERC further found that the Board did not err in considering the impact of the Respondent's actions on the administration of justice as it specifically assessed the impact of the

Respondent's misconduct when it turned its mind to the implications of the *McNeil* decision. The Board further reviewed case law where the honesty and integrity of police officers were found lacking and these officers nonetheless retained their employment. The ERC found that the Board did not err when it considered the Respondent's lack of self-benefit in its decision as there was evidence adduced to support its conclusion.

The ERC found that the Board did not err in minimizing the Respondent's conduct based on the nature of the exhibits. While the Board took the nature of the exhibit in consideration when it found that the allegation was established, it was open to the Board to take the general detachment practice of roadside dumping into consideration as a mitigating factor. The ERC further found that although the Board took an irrelevant mitigating factor (acrimonious relationship between the A/CO and the Respondent) in consideration, it was not a manifest and determinative error because it was not determinative in respect of the Board's conclusion that the Respondent should not be dismissed. The Board had found several mitigating factors, the acrimonious relationship being only one of them. The ERC found that there was no error in the Board's decision on sanction as there is no statutory limit to forfeiture of pay in the RCMP regime. The Board balanced the serious nature of the misconduct of the Respondent against a number of persuasive mitigating factors.

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

C-028 – Conduct Authority Decision The Appellant was the detachment commander of a Detachment. On April 8, 2015, the detachment sergeant sent an email to the district commander (the Conduct Authority) alleging problems with the Appellant's temper and interpersonal relationships with his subordinates since 2013 and with the municipal police service. On May 22, 2015, the Conduct Authority ordered a *Code of Conduct* investigation. The Appellant was served with the mandate letter on June 8, 2015 which included eight (8) allegations. On November 2, 2015, the investigator provided his report to the Conduct Authority. The Investigator had interviewed 17 witnesses and collected further material, including a written statement of facts by the Appellant. The Appellant was served with a Notice of Conduct Meeting dated November 6, 2015 and he provided a binder containing his response to the allegations, evidence as well as letters of support. The conduct meeting was held on December 18, 2015 and the Appellant was accompanied by his member workplace representative.

The Conduct Authority rendered his decision on December 18, 2015. The Conduct Authority found 4 of the 8 allegations were established. The Conduct Authority imposed the following conduct measures: four (4) days forfeiture of pay, three (3) days of forfeiture of leave, a reprimand, continued counselling and the Appellant had to write a letter of apology to the municipal police service.

The Appellant appealed the decision based on the process followed by the investigators and the Conduct Authority. He argued that the Conduct Authority could not proceed as he already had received informal discipline regarding these events in the form of a verbal direction from the District Commander and that some of the events took place more than a year before the conduct measures were imposed. The Appellant further alleged that there were notes from an inspector that he had not seen prior to the decision. The Appellant received these notes when he received the material that the Conduct Authority relied upon. The Appellant argued that the Respondent gathered these notes by himself prior to the conduct meeting and did not disclose them to the Appellant. Thus, his right to procedural fairness was breached. Lastly, the Appellant argued that he was not provided with full disclosure of witness statements and that the

Conduct Authority unfairly denied his request for a supplemental investigation.

ERC Findings: The ERC first found that the conduct measures were not imposed after the expiry of the one year time limit. The evidence on the record was not clear on whether the Conduct Authority was aware of the Appellant's conduct prior to initiating the *Code of Conduct* investigation. The allegations were prompted by the detachment sergeant's email to the Respondent on April 8, 2015. The ERC found that the Appellant had not met his burden of demonstrating that the investigation was biased. However, the ERC found that the Conduct Authority contravened procedural fairness by failing to postpone the Conduct Meeting and failed to disclose the Operations Officer's notes to the Appellant. The ERC further found that these breaches had not been cured during the appeal process and that the Appellant's case could not be deemed hopeless. Lastly, the ERC found that verbal guidance by a superior does not equate to informal disciplinary measures; therefore, the Appellant could not be found to have been disciplined twice for the same offence.

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

C-029 – Conduct Authority Decision The Appellant and her husband were both RCMP Members and served at different locales in "X" Division. The Appellant became involved in a sexual relationship with a Staff Sergeant who was her superior, with whom she had been working on a sensitive file. The affair lasted for months before it was discovered and reported to an Inspector. The RCMP initiated *Code of Conduct* proceedings against both the Appellant and the Staff Sergeant with whom she had been involved in a sexual affair. The record before the ERC did not contain information about the outcome of the *Code of Conduct* proceeding against the Staff Sergeant.

Three allegations were made against the Appellant. First, she had a "*romantic*" relationship with a superior, contrary to section 7.1 of the *Code of Conduct*. Second, she violated RCMP Conflict of Interest policy by failing to promptly report that sexual relationship, contrary to section 8.1 of the *Code of Conduct*. Third, she consumed alcohol on Force property, contrary to section 7.1 of the *Code of Conduct*. After filing submissions and attending a Conduct Meeting in which she admitted the allegations, the Respondent found the allegations to be established. She imposed against the Appellant a forfeiture of 160 hours of annual leave for Allegation 1, a forfeiture of 40 hours of pay for Allegation 2 and a reprimand for Allegation 3. She further imposed a period of ineligibility for promotion and directions to complete training and to attend counselling/treatment. The Respondent raised particular concerns with the repetitive nature of the Appellant's conduct and with the facts that it was contrary to clear direction and placed an investigation at risk.

ERC Findings: The ERC addressed all the Appellant's arguments on appeal and found that the Respondent did not contravene a principle of procedural fairness, err in law or make a clear and overriding error of fact. Firstly, none of the Appellant's objections to alleged procedural fairness breaches were made at the earliest possible opportunities, all of which were before and in some instances well before the Respondent issued her decision. It further was unclear if certain of the alleged actions could be viewed as procedurally unfair at all. Secondly, the Respondent did not err by basing Allegations 1 and 2 on sections 7.1 and 8.1 of the *Code of Conduct*, respectively. It was evident from the *Code of Conduct* and the RCMP Conduct Measures Guide that sections 7.1 and 8.1 were appropriate in the circumstances. The Respondent also did not break the rule against "*multiplicity*" by addressing the Appellant's improper workplace relationship through two allegations instead of through a single allegation, as the allegations dealt with different types of conduct and had to be evaluated differently. Thirdly, the Respondent's

decision did not contain a clear and overriding factual error. The Appellant's beliefs that RCMP Members should not be made to report their extramarital workplace affairs, or expected to know relevant RCMP authorities, were not acceptable bases for interfering with the decision. Moreover, the time frames placed in the Allegations were not problematic. Lastly, the Respondent applied the right test in ordering conduct measures, and the financial forfeitures she chose to impose were at the low or lowest ends of the applicable continuums set out in the RCMP Conduct Measures Guide.

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

Other Appeals

NC-025 – Medical Discharge On July 31, 2015, the Respondent signed a Record of Decision (ROD) that the Appellant be discharged from the Force on the ground that he was unable to meet his employment requirements on the basis of having a disability. The ROD states that the Appellant had been absent from duty on sick leave (ODS) since August of 2008, that he had not participated in Graduated Return to Work attempts, and that there was insufficient medical information on file to allow an assessment regarding the Appellant's return to work. The Appellant's Medical Profile was changed to O6 in 2010, and one medical report on file indicates that the emotional health of the Appellant "is such that the prognosis is poor for him to ever be able to return to work for the RCMP".

The ROD was served at the Appellant's nephew's residence on August 4, 2015. On August 20, 2015, the Appellant wrote to the Office of Coordination of Grievances and Appeals (OCGA) requesting an extension to file his appeal of his medical discharge. The OCGA granted a fourteen (14) days extension to file the appeal form and append a copy of the ROD. On October 15, 2015, the OCGA advised the Appellant that he had done nothing to indicate he wished to pursue his appeal, and that he disposed of fourteen (14) days to respond in writing as to whether he wished to continue the appeal process. On November 15, 2015, the Appellant responded that his medical condition had made it difficult to address the appeal, but that he would complete his submission by December 15, 2015. From November 2015 to August 2016, the OCGA followed-up with the Appellant, who indicated that he still wished to pursue his appeal, but was unable to do so at the moment due to his medical condition. On September 9, 2016, the Appellant indicated that he was entering an in-facility treatment program. This was the last correspondence the OCGA received from the Appellant. The OCGA contacted the Appellant numerous times throughout 2016, without receiving a response.

ERC Findings: The ERC found that the Appellant had abandoned his appeal, as there was a multi-year period of requesting the completion of the appeal form; numerous attempts at communication that were ignored by the Appellant and several extensions granted (either explicitly or implicitly). In addition, the ERC found that the Appellant did not meet the time limit for submitting his appeal and provided no extenuating circumstances that merit an extension.

ERC Recommendation: 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:

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requirements on the basis of having a disability. The ROD states that the Appellant had been absent from duty on sick leave (ODS) since August of 2008, that he had not participated in Graduated Return to Work attempts, and that there was insufficient medical information on file to allow an assessment regarding the Appellant's return to work. The Appellant's Medical Profile was changed to O6 in 2010, and one medical report on file indicates that the emotional health of the Appellant "is such that the prognosis is poor for him to ever be able to return to work for the RCMP".

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Having noted that the Record contained neither form 6437 nor the necessary information to consider an appeal as having been submitted, as the Appellant never complied with the requirements of AM II.3.5.2.1., the Appeal Adjudicator agreed with the ERC who stated that "it is highly unlikely in any event that the appellant will further respond to this process. The OCGA made several attempts to contact him as well as simplify the process to accommodate the Appellant's medical condition". The Adjudicator also agreed with the Chairperson of the ERC who wrote that "the RCMP made **exceptional** efforts to assist the Appellant during both the career actions and the appeal process". The Adjudicator dismissed the Appeal having found that the Appellant had not presented his Appeal within the statutory limitation period, that he had not identified extenuating circumstances that would justify a retroactive extension and that he had abandoned his Appeal.

NC-026 – Medical Discharge In May 2012, the Appellant began a period of off duty sick (ODS), on which he subsequently remained until he was discharged in the proceedings which are the subject of this appeal. In February 2014, a Health Service Officer (HSO) panel determined that the Appellant was unlikely to return to work in any capacity in the foreseeable future and modified his medical profile by lowering it to a permanent O6. Starting in May 2015, the Appellant's Commanding Officer (CO) sent several letters to the Appellant in order to determine whether the Appellant could return to work. The Appellant refused some of the letters, but provided an incomplete medical certificate and later refused to provide further medical information to the Force. In order to advise the CO on the Appellant's medical situation, the HSO requested further medical information from a specialist regarding diagnostic, prognostic and current situation. On December 15, 2015, the Appellant's CO issued a *Notice Requiring a Member to Undergo a Medical Examination or an Assessment by a Qualified Person.* In February 2016, the HSO informed the Appellant's CO that, as the Appellant had not presented himself for the required medical examination, she was left to rely on the medical information made available to the Force. The HSO was of the opinion that the Appellant's medical profile of O6 remained unchanged, that he had reached maximum medical improvement, and as such

he was not likely to return to modified or full duties in the reasonably foreseeable future.

In March 2016, proceedings were commenced regarding the discharge of the Appellant from the Force on the ground that he was unable to meet his employment requirements on the basis of having a disability. In his response to the Notice of Intent to Discharge (NOI), the Appellant argued that the material provided with the NOI yielded several errors, omissions and inaccuracies in dates. He further argued that criminal breaches, *Code of Conduct* offences and unethical practices have been committed by parties involved in forwarding allegations against him and seeking his discharge. The Appellant submitted that the RTW/Duty to Accommodate (DTA) process was not followed as no options were ever presented to him. In her Record of Decision (ROD), the Respondent found that the Appellant had been provided with reasonable opportunities to participate in the accommodation process, but had failed to do so. The Respondent concluded that if an employee remains unable to work for the reasonably foreseeable future, even though the employer has tried to accommodate him or her, the employer will have satisfied the duty to accommodate test for undue hardship. The Appellant appealed this decision.

Upon receiving the material that was before the Respondent when she made her decision, the Appellant raised an objection on the basis that there were materials missing from the disclosure package and that the Respondent did not have sufficient evidence to render her decision.

ERC Findings: The ERC first found that the Appellant had not met his burden of establishing that the requested materials met the disclosure criteria and found that the Respondent had sufficient information to render her decision. The ERC found that the RCMP made several efforts to fulfill its obligations in the accommodation process, beginning in May 2015, when the Force attempted to ascertain the Appellant's health status. The ERC lastly found that in the context of the dismissal of employees on the basis of absenteeism due to disability, jurisprudence recognizes that attendance at work is a legitimate work-related standard. Further, the Appellant had a corresponding and ongoing obligation to provide relevant medical information to assist the Force in determining whether he could be accommodated. The ERC found that the Respondent's decision was not clearly unreasonable.

ERC Recommendation: 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:

The Appellant was absent from duty from May 2012 until his discharge in June 2016. In February 2014, a Panel composed of three RCMP Health Services Officers assigned the Appellant a permanent O6 medical profile. The Appellant was deemed "unable to return to modified or full duties in the reasonably foreseeable future". By the end of December 2014, the Appellant's Medical Certificate had expired thus rendering his absence from the workplace unjustified.

In May 2015, the Appellant's Detachment Commander began corresponding with the Appellant, authoring seven letters, the last one dated March 7, 2016. He repeated his offers of assistance and repeated his attempts to have the Appellant provide the required medical documentation and information to support his absence from duty. The Appellant was informed of possible consequences should he fail to comply. The Appellant either refused service of the correspondence, provided incomplete and uninformative Medical Certificates, refused to provide

the RCMP HSO with medical information or refused to attend an evaluation with a medical subject-matter expert chosen by the RCMP.

On March 17, 2016, the Appellant's Detachment Commander issued a Preliminary Recommendation to Discharge or Demote a Member. Then on March 29, 2016, the EMRO issued his Recommendation to Discharge the Appellant. On April 18, 2016, the Respondent issued the Notice of Intent to Discharge, providing the Appellant the opportunity to be heard before she rendered her final decision. The Appellant did not request a meeting but he did request two extensions in order to submit written representations. The requests were granted.

The Respondent issued her Order to Discharge the Appellant on June 16, 2016. The decision was effective immediately, the Appellant receiving 80 hours of pay rather than the 14-day notice.

On Appeal, the Appellant argued that the Detachment Commander and/or Respondent had failed in their duty to accommodate him. The Appeal Adjudicator found that the Appellant had been given multiple opportunities to submit medical information in order to justify his absence from the workplace, but failed to do so. He was repeatedly offered assistance from his Detachment Commander, but did not reach out. He refused service of documents. He was informed of an upcoming medical assessment with a medical expert, but did not attend. He also refused to communicate his medical information to the HSO, preventing the HSO from establishing an updated medical profile and determining whether the Appellant could be reintegrated into the workplace with or without accommodation. Also, the Appellant was informed of the possible consequences should he continue to refuse to comply with policy. The Appeal Adjudicator found the Appellant's Detachment Commander, the EMRO and the Respondent acted diligently at all times, respecting their authorities and meeting their obligations and responsibilities.

The Appellant alleged that the Respondent's decision was reached in a manner that contravened the applicable principles of procedural fairness, that it was based on an error of law and that it was clearly unreasonable. He failed to establish his case. The Appeal Adjudicator confirmed the Respondent's decision and dismissed the Appeal.

NC-027 – Harassment The Appellant applied for a position with specialized duties but was unsuccessful in the selection process. He grieved, and his grievance was denied on the merits at Level I, but was successful at Level II. The remedy awarded at Level II was a “Redress Order.” The Redress Order provided a mechanism to take place in the event the Appellant applied for future similar positions. The Appellant consequently applied for a number of these positions and was unsuccessful in those selection processes.

The Appellant alleged that the Redress Order was not followed, and that the decision-maker in his selection processes should have been someone other than the Alleged Harasser. Further, he submitted that the Alleged Harasser retrieved, without authority, “personal information” as defined by the *Privacy Act* relating to him from RCMP data banks and disclosed this information and some other personal information to the individual the Appellant claims should have made the decisions regarding the staffing of the positions. The Appellant further submitted that, by doing so the Alleged Harasser affected his chances of being selected for these kinds of positions in the future.

The Appellant also complained that the Alleged Harasser communicated with him in respect of the outcome of his applications, causing him embarrassment and humiliation. In the Appellant’s view, the Alleged Harasser had no right to do so and was trying to convince him not to apply for

future posts. In the Appellant's view, the Alleged Harasser was purposely trying to intimidate, humiliate and belittle him and consequently, harassed him.

The Level I Adjudicator found that no harassment took place and that the Alleged Harasser was simply performing duties associated with the position the Alleged Harasser was holding at the time and that correspondence written to the Appellant by the Alleged Harasser was required and in compliance with RCMP policies.

ERC Findings: The ERC addressed whether or not the Level I Decision was or was not clearly unreasonable. To do so, the ERC had to interpret the Redress Order and apply it to the Alleged Harasser's conduct. The ERC found that the Redress Order signed by a Level II Adjudicator was paramount and was narrowly interpreted by the Alleged Harasser. The ERC agreed with the Appellant that someone other than the Alleged Harasser was the decision-maker regarding his applications. The ERC did however, find that there still remained an administrative supportive role for the Alleged Harasser to participate in the process due to his or her position at the time. The ERC closely examined the email sent to the Appellant and found it helpful, not humiliating. The Alleged Harasser had every right to share personal information of the Appellant with the individual she shared the information with as this information was relevant to the positions applied for. There was no evidence presented to the ERC that the Alleged Harasser had harmed the Appellant in any way in regard to future applications he may plan on submitting. The ERC found no evidence of harassment and found that the Level I Decision was not clearly unreasonable.

ERC Recommendation: The ERC recommends that the Commissioner or her Designated Level II Adjudicator deny the appeal.

NC-028 – Medical Discharge The Appellant, a Civilian Member of the RCMP, was assigned in 2013 with a temporary medical profile of O6, which means that the Appellant was unsuitable to perform any duties in the RCMP. The Appellant was absent from his workplace since March 2012. Some of these absences were authorized, and some were not. A Stoppage of Pay and Allowances was eventually ordered.

The Appellant on numerous occasions filed incomplete medical certificates and Questionnaires. It was pointed out to him several times that it was his responsibility to ensure that this was done properly. The Appellant was communicated with by his CO and by others in respect of filing medical certificates and a possible Return to Work. His doctors advised that the Appellant was at some point before his discharge able to return to work for a few hours per day and depending on his medical condition, would gradually be able to return full-time.

The Appellant refused to return to work until a number of conditions were met including: resolution of a perceived harassment situation, reconsideration of a reclassification of his position, and removal of the Stoppage of Pay and Allowances.

Having made numerous efforts to communicate with the Appellant about the importance of returning to work, the CO prepared and signed a Notice of Intent to medically discharge the Appellant. The Appellant was in fact medically discharged from the Force in late 2016.

The Record of Decision determined that the Force had tried to accommodate the Appellant up to the point of undue hardship. Due to the failure of the Appellant's legal obligation to participate and assist with this process, the Decision-Maker found that the Force had met its legal requirements and was accordingly, justified in releasing the Appellant on medical grounds. The

Decision-Maker found that there was no nexus between the conditions demanded by the Appellant and his then pending medical discharge. In any event, the CO had tried to meet with the Appellant to discuss his harassment allegations, and again, this was refused by the Appellant.

ERC Findings: The ERC found that the Appellant's medical release from the Force was justified. The ERC found that the Force had made numerous efforts to assist the Appellant to return to work, to provide him with information on the harassment complaint process and granted an extension to file comments with respect to his pending discharge, which he never did.

The ERC found that the Force had tried to accommodate the Appellant up to the point of undue hardship.

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

NC-029 – Medical Discharge The Appellant has been on indeterminate sick leave since 2008 (including a maternity leave and an attempt to return to work in October 2012). All medical certificates on file indicate that she is unfit for duty. In her attempt to gradually return to work, the RCMP Occupational Health and Safety Services (OHSS) recommended that she follow a program as part of her return to work. After discussion with her medical team, the Appellant refused to participate in the program.

Since September 2015, several Employer-Mandated Medical Assessments (EMMAs) have had to be cancelled because the Appellant could not attend or the health professional refused to examine her because she had to be accompanied by her spouse. When the Appellant last refused in August 2016 (due to the short notice given to undergo the EMMA), the OHSS advised her that her medical profile would be permanently changed to G6/O6 and that her file would be transferred to Human Resources.

After receiving the Notice of Intent to Discharge, the Appellant sent written submissions to the decision maker. The Respondent concluded in a single paragraph that the Appellant was unable to meet the employment requirements despite the RCMP's efforts to assist her in returning to work. In addition, according to the Respondent, the Appellant had not completed any EMMAs and had declined the offer to participate in the program. Consequently, the Respondent ordered the Appellant's discharge.

ERC Findings: The ERC first found that the Respondent's reasons were so inadequate as to make the decision clearly unreasonable. There was no indication from the Respondent's reasons that he had considered the Appellant's evidence, that he was aware of the issues and that he had taken them into consideration. The ERC found that, given the state of the case law regarding the adequacy of reasons, the Respondent's decision was not adequately justified to allow an appellate review of the correctness of its decision.

The ERC also found that the RCMP had failed to discharge its burden to demonstrate that it had accommodated the Appellant to the point of undue hardship.

ERC Recommendation: The ERC recommended to the Commissioner of the RCMP that the appeal be allowed.

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

[TRANSLATION]

The Appellant appealed the decision of the Officer in Charge, Administration and Personnel of "X" Division (Respondent) to discharge her from the RCMP on the grounds that she had a disability, as defined in the *Canadian Human Rights Act*.

The Appellant claims that the impugned decision contravenes the applicable principles of procedural fairness and is clearly unreasonable. According to the Appellant, [translation] "the decision is based on memos and documents that contain major errors and falsehoods." She notes that she brought the [translation] "errors and falsehoods" to the Respondent's attention as part of her [translation] "submissions" and that her submissions included supporting documents, [translation] "but that there is no indication that they were taken into consideration." Moreover, while the RCMP claimed to have [translation] "done everything in its power to help her," the Appellant claims that the RCMP [translation] "only made one offer to assist her."

In addition to the usual texts, the Record of Decision – Employment Requirements – Administrative Discharge (RD) contained only the following:

> [Translation]
>
> Reason(s) for the recommendation:
>
> - Disability, as defined in the *Canadian Human Rights Act*
>
> Particulars:
>
> [The Appellant] is no longer able to meet the employment requirements despite the RCMP's efforts to help her recover and the accommodation measures to help her return to work.
>
> Findings:
>
> Occupational Health and Safety Services has made no progress in its efforts to help [the Appellant] recover or return to work in any capacity. [The Appellant] did not participate in medical examinations mandated by the OHSS. [The Appellant] declined the offer to take advantage of rehabilitation services.

Pursuant to section 17 of the *Royal Canadian Mounted Police Regulations, 2014* (SOR/2014-281), the appeal was referred to the RCMP External Review Committee (ERC). A careful review of the file allowed the ERC Chairperson to find that the Respondent's reasons were [translation] "so inadequate as to render the decision clearly unreasonable" since there is [translation] "no indication from the Respondent's reasons that he considered the Appellant's evidence" even though the Appellant had provided the Respondent with [translation] "a full submission noting errors and deficiencies in the documents accompanying the Notice of Intent."

Since the ERC was of the opinion that [translation] "the Respondent's decision is not adequately justified to allow an appellate review of the correctness of its decision," and further noting that [translation] "the RCMP has not discharged its duty to accommodate the Appellant," it recommended that the Adjudicator allow the appeal and remit the matter for a new decision. After reviewing the case, and without hesitation, the Adjudicator hearing the appeal endorsed the ERC's recommendation and allowed the appeal.

NC-030 – Medical Discharge Upon becoming a member, the Appellant was posted to a province where she spent her entire career. She was beset by and treated for numerous medical issues over the next decade. After being off duty sick for over two years, the Health Services Officer (HSO) assigned to her the medical profile of Permanent O6, meaning she could not return to any RCMP duties in the reasonably foreseeable future. She was also told that a discharge process may be engaged. This stunned her, as she believed health records had been sent to the RCMP in support of her return to work.

The Appellant's practitioner wrote a letter to the HSO, which the Appellant quoted as stating that her health was improving and that she could return to work imminently. The Force nevertheless commenced medical discharge proceedings during which the Appellant's practitioner wrote the HSO another letter which the Appellant quoted as stating that the Appellant could return to work imminently to perform restricted duties and possibly, in further time, full duties. The HSO did not believe this letter contained sufficient clinical evidence to justify a change in his medical opinion.

The Respondent issued an Order to Discharge the Appellant, reasoning that her disability would continue to prohibit her from satisfying basic employment obligations and that the RCMP met its duty to accommodate her disability to the point of undue hardship. The Respondent indicated that he accepted the HSO's evidence. He added that, as a result of the apparent opinion of the Appellant's practitioner, he spoke with the HSO shortly before completing his Decision and was assured by the HSO that, among other things, the Appellant's medical profile remained justified.

The Appellant presented an appeal in which she relied, in part, on her practitioner's two letters.

ERC Findings: The ERC found that the practitioner's letters were admissible on appeal, as the Appellant took reasonable steps to have them placed before and examined by the Respondent. The ERC then dealt with the merits of the appeal. To begin, it found that the Respondent contravened a principle of procedural fairness by basing his Decision, in part, on information he obtained during a private conversation with the HSO without first disclosing to the Appellant that he had obtained such information or offering her an opportunity to address it. Second, the ERC found that the Respondent did not breach the principle *delegatus non potest delegare*, as it was clear that he made the Decision himself. Third, the ERC found that neither the Respondent nor the record adequately explained why the HSO's clinical evidence was preferred over that of the Appellant's practitioner. This omission to address conflicting evidence central to the outcome of the matter rendered the Decision clearly unreasonable and also resulted in an erroneous finding that the Force had accommodated the Appellant's disability up to the point of undue hardship.

ERC Recommendation: The ERC recommends that the appeal be allowed and that the Decision be quashed. It further recommends that the matter be remitted to a new decision-maker, with specific directions, on the basis that the Respondent contravened a principle of procedural fairness by privately speaking with and accepting information from the HSO, the full contents of which the Appellant likely cannot ever know or reply to.

NC-031 – Medical Discharge The Appellant has been on sick leave since April 2014. The medical reports provided by the Appellant indicate that she has a medical condition caused by a conflict situation in her work environment. Since the end of 2014, the medical reports provided by the Appellant (until March 2017) indicate that she is unfit for duty for an indefinite period. However, the Appellant's treating physician, her medical specialist and the Health Services Officer of her division all indicated that she could return to work if she was offered a different

position. There is no evidence on the record that such an action was taken by the RCMP.

On January 16, 2017, a preliminary recommendation for discharge was sent to the Employee Management Relations Officer (EMRO) recommending that the Appellant be discharged for medical reasons. On February 2, 2017, the EMRO sent a recommendation of discharge to the Respondent. On February 3, 2017, the Respondent sent the Appellant a Notice of Intent to Discharge the member.

The Appellant requested that the Respondent recuse himself since he had made a previous decision on harassment complaints filed by the Appellant. In that decision, the Respondent found that the Appellant had not been harassed. The Respondent refused to recuse himself, but granted an extension of time for the Appellant to send her written submission. The Respondent also refused to meet with the Appellant, despite her request. The Respondent rendered his decision on April 5, 2017.

ERC Findings: The ERC first found that the Respondent did not have to recuse himself since the fact that the Respondent concluded that the harassment complaints were unfounded did not rebut the presumption of impartiality. However, the ERC found that the Respondent breached his duty to act fairly by not disclosing two pieces of information to the Appellant. Moreover, this breach of procedural fairness could not have been remedied by this appeal. Therefore, the ERC recommended that the file be remitted for a new decision.

The ERC nevertheless considered the merits of the case and found that the RCMP had not discharged its burden of demonstrating that it had accommodated the Appellant to the point of undue hardship.

ERC Recommendations: The ERC recommends that the Adjudicator allow the appeal and remit the file for a new decision.

NC-032 – Harassment The Appellant, a Civilian Member, was hired as a manager on a team involved in an Information Technology (IT) project. The relationship between the Appellant and the director to whom she reported (Alleged Harasser) soon became difficult. From the Appellant's perspective, the Alleged Harasser would sometimes raise his voice with her, rudely question her decisions, micro-manage her and jeopardize her ability to do her work. From the Alleged Harasser's perspective, the Appellant had poor communication skills, would not take appropriate direction and had been the subject of significant concerns by stakeholders working on the project. Meetings took place with the Appellant to discuss her performance.

The Appellant eventually left the Force and lodged a harassment complaint (Complaint) against the Alleged Harasser. The ensuing harassment investigation looked at multiple concerns raised in the Complaint, which included: (i) the manner in which the Appellant's initial orientation had taken place; (ii) instances in which the Alleged Harasser allegedly raised his voice; (iii) alleged inappropriate comments and behavior by the Alleged Harasser, and; (iv) the manner in which the Alleged Harasser had managed operational and performance issues involving the Appellant. Following the investigation, the Respondent determined that the Complaint was not established.

The Appellant lodged an appeal of the Respondent's Decision. The Appellant principally argued that the Respondent had misconstrued the facts in determining that no harassment had occurred and that further witnesses should have been interviewed.

ERC Findings: The ERC indicated that the Respondent, as a decision-maker in the harassment

investigation and resolution process, was obligated to assess the evidence and apply to it the legal test for determining whether harassment had occurred. In ascertaining whether the Respondent's decision in that regard was clearly unreasonable for the purposes of subsection 47(3) of the *CSO (Grievances and Appeals)*, the ERC considered whether the Decision revealed any manifest and determinative errors.

The ERC reviewed the Respondent's findings with respect to the manner in which the Appellant's initial orientation had taken place. The Appellant's concerns revolved around the Alleged Harasser's inability to attend a planned meeting with the Appellant on her first day, and that the Alleged Harasser had not himself formally oriented the Appellant. There was no reason to interfere with the Respondent's findings that while these events may have been unfortunate from the Appellant's perspective, the Alleged Harasser's actions surrounding the Appellant's work orientation did not amount to harassment.

The ERC also found no reason to interfere with the Respondent's finding that the record did not support allegations of yelling by the Alleged Harasser towards the Appellant. The Respondent's reasons referred to the evidence of the Appellant and Alleged Harasser as well as the evidence of other witnesses which called into question the accuracy of the Appellant's depiction of events and which did not support these allegations. The ERC further found that there was no basis to interfere with the Respondent's assessment of alleged inappropriate comments and behavior by the Alleged Harasser. The Respondent had noted that some of these incidents were not supported by independent witnesses, and that others could not reasonably be construed as harassment given the context in which they had taken place. In addition, the Respondent's reasons, when read as a whole alongside evidence in the record, demonstrated an overall concern with the Appellant's evidence which explained why he would not have accepted the Appellant's version of events regarding some of these incidents.

Further, the ERC examined the Respondent's assessment of allegations that the Alleged Harasser had micro-managed operational issues, had been overly critical of the Appellant in order to jeopardize her performance and had conducted himself improperly during two performance-related meetings. The ERC found no reason to overturn the Respondent's findings that while frustration, performance issues and a personality conflict permeated the interactions between the Appellant and Alleged Harasser, the Alleged Harasser had exercised his managerial authority legitimately in dealing with operational and performance issues involving the Appellant, and that his actions were not improper. The Respondent's findings in that regard were supported by the record.

Finally, the ERC considered whether the failure to interview certain individuals regarding some of the above-noted allegations amounted to a breach of procedural fairness. In the ERC's view, the evidence of these witnesses was not obviously crucial to understanding the events, as a result of which there was no such breach.

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

NC-033 – Harassment The Appellant and the Alleged Harasser, both Civilian Members, worked in their section since 2010. The Alleged Harasser was the team leader of the section and the Appellant's direct supervisor. In the fall of 2013, the Alleged Harasser presented the Appellant with a performance log (1004) as she noticed several discrepancies and issues within the Appellant's files that caused concerns. The Alleged Harasser met with the Appellant to discuss these issues, and the Appellant advised that she was having some difficulties managing her caseload. In May 2014, a concern regarding one of the Appellant's files was brought to her and

the Alleged Harasser's attention. The Alleged Harasser requested that the Appellant review the paper copy of the file in order to determine where the error originated from. The Appellant noticed that she had mistakenly discarded the file in a confidential waste bin and went to retrieve it. Approximately one week later, a file was mistakenly left on the Appellant's desk that was meant for another member. Inadvertently, the Appellant worked on the file and was told that it should have been given to the member as it was part of a series of cases already assigned to that member. The Alleged Harasser reassigned the file and sent an email to the member explaining the confusion. In May 2014, the Appellant commenced a period of medical leave.

The Appellant filed a Harassment Complaint against the Alleged Harasser and listed five (5) allegations of harassment. An investigation was held during which twelve witnesses were interviewed and additional materials obtained. After receiving the final investigation report, the Respondent held that the harassment complaint was not established. In the Decision, the Respondent addressed each allegation one by one by summarizing the evidence collected during the investigation for each allegation.

The Appellant appealed the Decision on the grounds that the Respondent ignored clinical evidence provided by the Appellant's healthcare providers substantiating harassment in the workplace, he misinterpreted the evidence and that there were procedural errors within the investigation itself, including one of her allegations not being canvassed during the investigation. The Appellant provided additional materials with her appeal submission including a Veteran's Affairs Canada decision (VAC decision) in which the Appellant was granted a disability pension.

ERC Findings: Firstly, the ERC found that, aside from VAC decision, the additional materials filed by the Appellant were not admissible as they could reasonably have been known before the Respondent's decision. The ERC found that the Respondent's failure to address the clinical evidence does not render his decision clearly unreasonable. The diagnosis is grounded on the healthcare professional's expertise, but who did not have the final investigation report. While the Respondent based his decision on the independent investigation which revealed that none of the witnesses could corroborate the Appellant's version of events; some even contradicted the Appellant's account of the facts. Moreover, many of the Appellant's perceptions were not shared by her colleagues. The ERC found that the Respondent addressed the applicable test and did not err in his interpretation of the evidence. Lastly, the ERC found that the Appellant had ample opportunity to address an allegedly forgotten allegation, but failed to do so.

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

NC-034 – Harassment The Appellant and the Alleged Harasser, both Civilian Members, worked in their section. The Alleged Harasser was the section manager. It appears that the triggering event of the harassment complaint relates to an incident regarding one of the Appellant's files, where a document should have been sent but could not be found. More particularly, in May 2014, this issue, which was deemed a performance issue by the Appellant's Team Leader (TL), was brought to the attention of the Alleged Harasser, as section manager. The Appellant met with the Alleged Harasser regarding this incident to discuss the TL's approach to the incident.

The Appellant filed a harassment complaint against the alleged harasser listing seven (7) allegations of harassment including the Alleged Harasser telling the Appellant "You're too nice" and "Why are you so secretive?". Some Allegations pertain to similar behaviors, while others relate to the Alleged Harasser's behavior towards other employees. The Respondent combined the allegations into one, but listed the seven (7) incidents. An investigation was held during

which eleven (11) witnesses were interviewed and additional materials obtained. After receiving the final investigation report, the Respondent held that the harassment complaint was not established. In the Decision, the Respondent found that the Alleged Harasser had acknowledged saying "You're too nice" and "Why are you so secretive?" to the Appellant, but that the comments were not meant to be demeaning or disrespectful. The Respondent pointed out that witnesses corroborated that the Alleged Harasser was friendly with all her staff and addressed the Appellant in a kind and pleasant manner.

The Appellant appealed the Decision on the grounds that the Respondent ignored clinical evidence provided by the Appellant's healthcare providers substantiating harassment in the workplace, misinterpreted the evidence and that there was an error in the mandate letter as it was missing one of the allegations. The Appellant provided additional materials with her appeal submission including a Veteran's Affairs Canada decision (VAC decision) in which the Appellant was granted a disability pension.

ERC Findings: Firstly, the ERC found that, aside from the VAC decision, the additional materials filed by the Appellant were not admissible as they could reasonably have been known before the Respondent's decision. The ERC found that the Respondent's failure to address the clinical evidence does not render his decision clearly unreasonable. The diagnosis is grounded on facts and perceptions recounted by the Appellant herself while the Respondent based his decision on the independent investigation which revealed that none of the witnesses could corroborate the Appellant's version of events; some even contradicted the Appellant's account of the facts. Moreover, many of the Appellant's perceptions were not shared by her colleagues. The ERC found that the Respondent addressed the applicable test and did not err in his interpretation of the evidence. Lastly, the ERC agreed that the Respondent had not included *per se* the missing allegation in the Mandate Letter; however, the allegation seemed to encompass all demeaning, belittling, offensive, judgmental and unprofessional comments allegedly made by the Alleged Harasser.

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

NC-035 – Medical Discharge Following a traumatic incident, the Appellant first took a year of leave without pay (LWOP) in 2002 and then took an educational LWOP to attend university in July 2003. In June 2009, the Appellant met with the Division Career Development and Resource Advisor (CDRA) to discuss her options for returning to work after six years of LWOP. Discussions were held regarding options for the Appellant between the Health Services Officer (HSO), the CDRA and the Return to Work Coordinator (RTW Coordinator) to find a suitable posting for the Appellant as she had restrictions and limitations. The Appellant returned to the RCMP in July 2009. However, on the same day, the Appellant began an off duty sick (ODS) period. In September 2009, the Appellant requested information regarding her disability pension estimate in order to make a decision regarding whether to agree to a consensual medical discharge. The Appellant returned to work in October 2009 until she went ODS on April 13, 2010. She returned to work in May 2010. The Appellant had however requested another disability pension estimate in March 2010; the Appellant would eventually request five estimates pertaining to different discharge dates. As the Appellant had not made a decision regarding her discharge, the CDRA found a different temporary posting of 3 months for the Appellant, which she began in August 2010, until she went on parental leave in December 2010. At this point, the Appellant was still discussing whether she should take a consensual medical discharge with the CDRA and RTW Coordinator. The Appellant met with the RTW Coordinator in November 2011 to discuss her goal of completing 23 years of service and was tentatively looking at a discharge date of July 11, 2012. In January 2012, the District

Officer found a temporarily funded position for the Appellant that would bring her to her discharge date and she returned to work. The District Officer informed the Appellant that this position was suitable solely on the basis that the Appellant had indicated that she would leave the Force in July 2012. However, the Appellant afterwards changed her discharge date to June 2014 to enable her to complete 25 years of service. The Force found another position for the Appellant in her previous detachment. In December 2012, the Appellant commenced a ODS period which lasted until her medical discharge.

In January 2013, communications between the Force and the Appellant began to flounder as the Appellant would not return the calls, messages or emails of her commanding officer, the RTW Coordinator or the CDRA. It could take months before either individual could reach the Appellant; the RTW Coordinator contacted the Appellant several times between June 2013 and May 2016 before receiving a response. Based on the Employer Mandated Medical Assessment ordered in November 2016, the Appellant's medical profile was modified to a permanent O6, which signified that the Appellant was permanently unfit for any duty within the RCMP. The Appellant had indicated that she would provide medical information to counter her medical profile; however, she failed to do so.

The employment requirements process which is the subject of this appeal therefore began in March 2017. In July 2017, the Respondent rendered his decision that the Appellant be discharged from the RCMP. The Respondent indicated that he had reviewed the Appellant's two submissions as well as the preliminary recommendation and the recommendation. He indicated that the Appellant had been provided with reasonable opportunities to provide additional medical information that would modify her O6 medical profile, but had failed to do so and had not participated in efforts to secure an accommodation.

The Appellant appealed this decision and indicated that the decision was procedurally unfair as the Respondent provided no reasons for his decision. Further, there was a reasonable apprehension of bias created by the fact that the Respondent is the direct supervisor of the recommending officers. The Appellant reiterated that the Force had not discharged its duty to accommodate her and went so far as to ignore her concerns and pleas regarding the harassment she endured at her detachment.

ERC Findings: The ERC found that the Appellant has not satisfied her burden of persuasion regarding her allegation that there were insufficient reasons by simply addressing the Order of Discharge as the decision itself contained sufficient reasons. The ERC further found that the Appellant had not provided sufficient evidence that would demonstrate a reasonable apprehension of bias on the part of the Respondent as the Respondent's status as a senior member, when deciding whether to discharge the Appellant, was clearly contemplated by the statutory regime enacted by Parliament. The ERC found that the Respondent did not breach the Appellant's right to procedural fairness by not having direct medical evidence to render his decision and relying on information from the HSO as his decision pertained on whether the Force had accommodated the Appellant to the point of undue hardship; not whether the Appellant's medical situation prevented her from attending work. The ERC found that the Appellant has not explained a link on how the harassment concerns she brought forward had a bearing on her medical issue. Lastly, the ERC found that the Respondent did not make a reviewable error in his assessment of the Force's duty to accommodate and finding that it was met as multiple efforts were made to accommodate the Appellant starting in 2009.

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

NC-036 – Medical Discharge Early on in her 25-year career, the Appellant experienced alleged workplace sexual harassment but did not file a complaint. In mid-2011, she joined a new post. She went off duty sick in early 2013 and was slated to return to work in mid-2013 but did not do so, as new incidents of alleged workplace harassment and discrimination aggravated her condition. She made complaints over how she was treated. Some of the complaints were deemed unfounded. The status of the rest of the complaints were not disclosed. Over the next two years, RCMP officials expressed to the Appellant an openness to offering her return to work opportunities either at or near her preferred locale. The Appellant could not return and was soon assigned the medical profile of Permanent O6, meaning she was unable to return to any duties within the reasonably foreseeable future. Subsequently, an Employee Management Relations Officer unfruitfully tried to meet with her to discuss options and obtain any information which could help the RCMP find an accommodation.

In April 2017, the Appellant supplied the RCMP with a certificate from her doctor stating that she would be unfit for duty until a point identified as "*forever*". Following the conducting of a medical discharge process, the Respondent issued an Order to Discharge the Appellant, finding that the RCMP's efforts to accommodate her had not been successful, that she was not able to fulfill the basic obligations of her employment relationship for the foreseeable future and accordingly, that the RCMP had met its duty to accommodate her disability (Decision). The Appellant initiated an appeal, arguing that the Respondent violated a principle of procedural fairness and erred in fact and law by disregarding the alleged abuse she experienced and by omitting to properly consider whether the RCMP met its duty to accommodate her disability up to the point of undue hardship.

ERC Findings: The ERC found that the Respondent plainly considered the information supplied to him involving the alleged harassment and discrimination the Appellant suffered as a member. With genuine respect for the Appellant and her concerns, the ERC pointed out that: the cause of an employee's disability has no bearing on the scope of the duty to accommodate; there was no evidence in the record directly linking her disability to harassment or discrimination; and it is not the role of the final adjudicator on appeal to re-weigh evidence in the absence of a manifest and determinative error. The ERC also found that the Respondent sufficiently assessed whether the RCMP met its duty to accommodate the Appellant's disability, up to the point of undue hardship. His reasons and assessments demonstrated an understanding and application of the underlying principles of the relevant test. Namely, it could be reasonably inferred from the Decision that, in the Respondent's opinion, the standard of attendance at work had been instituted for a purpose rationally linked to the Appellant's job performance and in an honest belief that it was necessary to the fulfillment of that legitimate work-related purpose. Furthermore, it could be reasonably inferred from the Decision that, in the Respondent's view, the standard of workplace attendance was necessary and that it was not possible to accommodate the Appellant's disability short of undue hardship. This view was based on the fact there were no steps which could be taken to accommodate a member with a prognosis of being unable to return to work in any way "*forever*".

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

NC-037 – Stoppage of Pay and Allowances The Appellant appealed a decision by the Force ordering the stoppage of his pay and allowances (SPA). The SPA order was imposed as a result of *Code of Conduct* allegations and statutory charges that had been brought against the Appellant in relation to three incidents of alleged inappropriate sexual conduct against another RCMP Member, a detained member of the public and a victim/witness in a domestic complaint.

The Appellant's arguments all centered on the incident involving the other RCMP Member. A *Code of Conduct* investigation had found that incident was "not established", largely because that other Member refused to provide a statement. However subsequently, during the Conduct and statutory investigations regarding the other two incidents, that Member provided a statement and the Appellant was charged criminally with sexual assault. The Appellant argued that in determining the SPA, by considering the incident involving the other Member which had been found "not established" by the Conduct process, the Respondent erred in law by breaching the principle of *autrefois acquit* and the rule against double jeopardy; and by introducing bad character evidence and breaching the similar fact evidence rule. The Appellant further argued that the Respondent made a clearly unreasonable decision by conflating the SPA and Conduct processes; by reversing the presumption of innocence, thereby breaching sections 11(d) and 7 of the *Canadian Charter of Rights and Freedoms* (*Charter)* and sections 2(d) and 2(e) of the *Canadian Bill of Rights*; by finding the evidence regarding the impact of a SPA to be irrelevant; and, by breaching the principle of *stare decisis*.

ERC Findings: The ERC found that the Appeal was referable and presented within time. Regarding the merits, the ERC found that:

- The principles of *autrefois acquit* and double jeopardy do not apply in the SPA process as, unlike the Conduct process, the SPA process is not a disciplinary measure; it is not a process whereby the Appellant can be convicted or sanctioned. It is an interim, protective measure designed to protect the integrity of the RCMP pending the outcome of the Conduct and criminal proceedings that gave rise to it. The Respondent did not re-decide the Conduct decision, he rather took into account the fact that the incident had since led to a statutory charge of sexual assault against the Appellant which is relevant in determining the SPA. This was not a situation where the Appellant was being sanctioned twice for the same conduct.

- The Respondent did not apply a similar fact evidence analysis and did not introduce bad character evidence. He did not use the incident involving the other Member as an example of past similar bad behaviour to illustrate that the Appellant has the type of bad character to do what he is alleged to have done in the other two incidents. Rather, the Respondent considered the evidence before him as it had resulted in a statutory charge of sexual assault, and applied the test as he was required to do to determine the SPA.

- The Respondent understood the difference between the SPA and Conduct processes and that he was determining an interim SPA matter as opposed to making a final determination on a Conduct process.

- Section 11 of the *Charter* does not apply to the SPA process; and, bald assertions that the *Canadian Bill of Rights and* section 7 of the *Charter* were breached are inadequate.

- A decision-maker is required to consider all relevant evidence, but is under no obligation to consider irrelevant evidence. The impact of the SPA on the Appellant and his family was not relevant in determining any of the criteria for a SPA set out in the RCMP Conduct Policy.

- The principle of *stare decisis* does not apply to administrative tribunals; and, SPA decisions rendered under the previous *RCMP Act* are based on a different test than the current framework and are therefore of no assistance in determining the current Appeal.

ERC Recommendation: The ERC recommends that the Commissioner deny the Appeal as the Respondent's decision to order a SPA did not contain any errors of law and was not clearly unreasonable.

Former Legislation Cases:

Grievances

G-661 – Relocation The Grievor was transferred from another Division. Prior to his transfer, he owned a home in the other Division. The cost relocation in respect of the sale of his home in the other Division had been authorized. The RCMP Integrated Relocation Program (IRP) set out various benefits that may be available in respect of the sale of the Grievor's home at the former place of duty, as long as it was sold within a two-year limitation period. Near the end of the two-year limitation period, the Grievor had only one pending offer with respect to the sale of his home in the other Division. The Grievor's spouse was working in a remote "fly-in" community with no legal services. Due to the logistical problem of obtaining the spouse's signature for the legal documents for the pending offer, the Grievor asked the contracted relocation service provider for an extension of the two year time limit. The Grievor then made this request to a Relocation Advisor who sent the request to the Respondent. The Relocation Advisor copied the Respondent's reply, denying the extension, in correspondence with the Grievor, on June 1, 2011. The Respondent's reply stated that it did not have the authority to approve the Grievor's request and that a business case requesting the extension based on exceptional circumstances, would need to be sent to Treasury Board Secretariat for review. The Grievor never submitted a business case and 18 months later, the Grievor requested an in-person meeting with the Respondent, who, when asked what he could do in the Grievor's case, replied that he could do nothing. One month after the meeting, the Grievor grieved the decision by the Respondent to deny his extension request. The Respondent requested a decision on the Grievor's compliance with the thirty-day time limitation to file a grievance at Level I. The Level I Adjudicator denied the grievance on the preliminary issue of compliance with time limits at Level I, finding that the Grievor was out of time as the decision by the Respondent had been communicated to the Grievor, when he first received a copy of the Respondent's reply from the Relocation Advisor on June 1, 2011. The Grievor resubmitted his grievance at Level II along with a sanitized copy of a Level II Decision document relating to a different grievor. The matter was referred to the ERC for review.

ERC Findings: The ERC found that the sanitized Level II Decision document, filed at Level II in support of the Grievor's submission, was admissible. The ERC considered that *Privacy Act* provisions applied in relation to these types of documents and they may not have been easily accessible by grievors in general. However, the ERC found that the Level II Decision document was of limited relevance to the grievance as the facts were limited and the Grievor's case could be distinguished from the case in the Level II Decision. The ERC found that Respondent communicated the decision to the Grievor on June 1, 2011 and that this was the day the Grievor's right to grieve crystallized. The grievance was therefore presented outside the thirty-day limitation period outlined in paragraph 31(2)(a) of the *RCMP Act*. The ERC further found that a retroactive extension of time was not warranted as there were no exigent circumstances that would cause the Commissioner or Delegate to obviate from the statutory requirement to file a grievance at Level I within 30 days.

ERC Recommendation: The ERC recommends that the Commissioner deny the grievance on

the basis that it was not presented at Level I within the 30 day time limit set forth in paragraph 31(2)(a) of the *RCMP Act.*

G-662 – Relocation The Grievor was transferred to a new location within his Division, as a result of which he decided to sell his home. Pursuant to the *RCMP Integrated Relocation Program* (IRP), the Grievor was entitled to seek various benefits in relation to the sale of his home. However, the home had to be sold within two years from the date he had received a transfer notice in writing in order to qualify for these benefits. This meant that his home had to be sold by August 21, 2009. The Grievor's home was listed for sale in October of 2008, and there were subsequently significant challenges in selling it which included difficult market conditions and, chiefly, an offer on the home that fell through shortly before the August 21, 2009 deadline. The Grievor eventually sold the home in December of 2009. A relocation reviewer forwarded to the Respondent a business case arguing that the Grievor should receive benefits relating to the sale of his home even though he had missed the deadline, because his circumstances were exceptional. The Respondent denied that request.

The Grievor grieved the Respondent's Decision. The Level I Adjudicator denied the grievance, finding that the Grievor was required to be aware of applicable time limits contained in the IRP, and that these time limits had been sufficiently brought to his attention.

ERC Findings: While the Grievor argued that he had been confused by inconsistent communications from relocation staff regarding the applicable deadline to sell his home, the Record indicated that the Grievor had been sufficiently informed of the two-year time limit which applied in his case, and that he should have been aware of the fact that he had until August 21, 2009 to complete the sale of his home. That deadline was exceeded as his home had only been sold in December of 2009. However, the ERC found that the Grievor's unique situation met the definition of exceptional circumstances set out in the IRP. Difficult market conditions in and of themselves might not be reasonably characterized as exceptional. However, within the challenging market conditions that did exist, a sales agreement which would have met the applicable two year deadline fell through immediately prior to the expiry of that deadline. Further, there appears to have been uncertainty amongst the Relocation and Third Party Service Provider Staff assisting the Grievor at the time regarding when the deadline was, and they did not remind the Grievor of the imminent August 21, 2009 deadline as it approached nor of the consequences which would flow if the deal fell through. These combined circumstances were exceptional as they were outside the Grievor's control and were rare, extreme and unforeseen.

The ERC concluded that the Respondent should have referred the Grievor's Business Case to the Treasury Board Secretariat (TBS), which had the authority to approve the request for reimbursement owing to exceptional circumstances pursuant to section 1.14.1 of the IRP. While the Respondent had communicated with the TBS with respect to the Grievor's case after the grievance had been presented, those communications failed to convey any meaningful information concerning the Grievor's exceptional circumstances.

ERC Recommendation: The ERC recommends that the grievance be allowed. The ERC further recommends that the Commissioner order a review of the Grievor's case to determine whether he still wishes to pursue approval for reimbursement of the relevant IRP expenses through the TBS and, if so, recommend that such a review include the preparation of a sufficiently detailed submission for those relevant expenses on an exceptional basis.

G-663 – Isolated Posts Directive The Grievor transferred to an isolated post where he lived

with his wife, who became pregnant a year or so later. Her pregnancy was deemed "*high risk*", and her local doctor prepared a letter stating that, for medical reasons, she was to obtain related care at a distant location. During the following months, the couple travelled to and from that location, to attend medical appointments. The Grievor admittedly did not review relevant authorities, including the National Joint Council *Isolated Posts and Government Housing Directive*, to learn his obligations regarding the medical travel, for which pre-approval was not obtained. In his view, his wife's high risk pregnancy itself met the requirements for medical travel and he was acting reasonably, based on what he gleaned from a co-worker and from a call with the Employee and Management Relations Office (EMRO).

Later during the pregnancy, in the first documented correspondence between the Grievor and the EMRO, an EMRO official stressed the importance of obtaining pre-approval for medical travel via a Form 2996, outlined the process for obtaining pre-approval, and provided an authority requiring pre-approval. Weeks later, the couple made a final trip to the location, without obtaining pre-approval to travel. Months after the birth of their child, the Grievor submitted a completed Form 2996 along with his isolated post medical travel expense claim. The claim was denied on the ground that "*approval was not in place at the time travel commenced*". The Grievor challenged the decision by way of a Level I grievance that was denied on the merits. The Grievor resubmitted the case at Level II, where he for the first time filed and relied on documents he had written or received years earlier.

ERC Findings: The ERC found that the evidence filed by the Grievor for the first time at Level II was not admissible, but that the general points he wished to make with it would be dealt with, as those points had already been made at Level I.

The ERC found the Grievor failed to follow or familiarize himself with applicable authorities that were available to the public, accessible to him as an RCMP member and/or provided directly to him by the EMRO at one point. The key authorities required that isolated post medical travel be pre-approved in writing. It is a long-standing position of the ERC and the Commissioner that RCMP members are expected to be familiar with the authorities that apply in their situations and ensure that any claims are made in compliance with those authorities. The ERC addressed the Grievor's principal positions and acknowledged that he conducted his business respectfully and in good faith, under what must have been stressful circumstances. Yet this did not alter the fact that the refusal of his claim was attributable to his omission to familiarize himself with and follow relevant authorities. This was an honest mistake, but RCMP travel policy stated that expenses resulting from mistakes were not a basis for reimbursement. The Grievor offered arguments for allowing the grievance despite his omission, but these were unsupported by evidence and/or the record.

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

G-664 – Travel The Grievor claimed a Private Non-Commercial Accommodation Allowance (PNAA) at a rate of $50.00 per day for the 29 days that he was on travel status. During this time he was required to stay overnight in a vacant trailer that was owned by the Force and located in the parking lot of an RCMP Detachment. His claim was denied by the Force and he filed a grievance. At Level I the Adjudicator found that the vacant, Force-owned trailer was not private accommodation and that the PNAA is not intended to compensate members for inadequate accommodations. At Level II the Grievor requested that in addition to his Level I grievance, new material should be considered that he said was not available to him at the time of his Level I grievance. The new material consisted of a retroactive amendment to section 6.1.2. of the RCMP Travel Directive; email correspondence in which the Grievor applied for payment of

the PNAA under the retroactive amendment and was refused; and the ERC's findings and recommendations and the Commissioner's decision in G-301.

ERC Findings: The ERC found that the grievance is referable to the ERC; that the Grievor satisfied the requirements for standing for the presentation of a grievance; that the grievance was submitted within the statutory limitation periods at Levels I and II; that the retroactive amendment to section 6.1.2. of the RCMP Travel Directive is not relevant to this grievance; that the email correspondence in which the Grievor applied for payment of the PNAA under the retroactive amendment and was refused, is inadmissible at Level II; and, that the ERC's findings and recommendations and the Commissioner's decision in G-301 are admissible at Level II, but not relevant to this grievance. Regarding the merits, the ERC found that the Grievor is not entitled to the PNAA as the trailer was owned by the Force; it was not being rented by another member at the time the Grievor stayed in it, so any "private" character it may have had as a result of someone living there was absent; failure to qualify as suitable police quarters/barracks does not transform the Crown-owned trailer into "private non-commercial accommodation"; and, section 26 of the Financial Administration Act is explicit that no payment can be made without the authority of Parliament. Therefore, any time a payment is made, it must be authorized either under a law or a properly promulgated regulation or policy. The National Joint Council Travel Directive (NJCTD) is clear that where a member stayed in "Government and institutional accommodation", the member is not entitled to a PNAA. The trailer at issue in this grievance was, at all relevant times, "owned and controlled by the Crown", regardless of whether or not it qualified as suitable police quarters. The NJCTD does not authorize payment of a PNAA in this case.

ERC Recommendation: The ERC recommends that the grievance be denied, as, at the relevant time, the trailer at issue fell within the NJCTD definition of "Government and institutional accommodation" as opposed to "private non-commercial accommodation".

G-665 – Legal Assistance at Public Expense The Grievor was the subject of two disciplinary notices. He was assigned a member representative (MR), but she went on sick leave before she could represent him at his hearings. Before a second MR could be designated, the Grievor hired a private lawyer and spent approximately $2,000 to review his case for the disciplinary hearing. Subsequently, the RCMP designated other MRs to deal with the Grievor, but each of them was ultimately unable to represent him because, according to the Grievor, their language or legal skills were unsatisfactory or, in one case, the MR was located too far from his region.

The Grievor made an initial request to the Director of Alternative Dispute Resolution (the Director of ADR) for financial assistance to retain outside counsel services. The Director of ADR was unable to grant this request, as he did not have the authority to reject or grant it. The Grievor filed a grievance against this decision. The file suggests that this initial grievance was withdrawn following an agreement upon which the Director of ADR forwarded to the Respondent the recommendation to reimburse the Grievor for his $2,000 fee. On December 11, 2007, the Grievor claimed reimbursement of the $2,000 fee from the Respondent and requested authorization to receive financial assistance to be represented by outside counsel. The Respondent denied this request on January 18, 2008, on the basis that the Grievor could rely on the legal services of an MR.

In his grievance, the Grievor alleged that the Force was unable to provide him with adequate representation using the MR system. As a result, he was entitled to hire a private lawyer and to be reimbursed for legal expenses incurred. He relied on the RCMP's policy on legal assistance at public expense and stated that he had met the criteria set out in that policy to be reimbursed

for such expenses.

The Level I Adjudicator dismissed the grievance, stating that the $2,000 fee had not been authorized in advance, as required by the applicable policy. The Adjudicator noted that, in her view, the Grievor had not been able to demonstrate that he was aggrieved, since he himself seemed to want to choose not to be represented by an MR.

ERC Findings: The ERC found that the Grievor had standing, that he had presented his grievance within the time limits and that the ERC had jurisdiction to deal with the issues raised in the grievance. The ERC found that provision D.8. of Chapter VIII.4 of the Administration Manual (Legal Assistance at Public Expense for RCMP Employees) specifically prohibited legal assistance at public expense when the employee was involved in an internal RCMP process. In addition, although the Treasury Board policy does not provide for this restriction, it does indicate that the Grievor must have met the RCMP's expectations. The ERC also found that the Grievor had not requested prior authorization to incur the fees of his outside counsel and that he could therefore not be reimbursed.

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

G-666 – Medical Discharge The Grievor went on medical leave in June 2003. Starting in December 2003 until August 2005, the Force requested that the Grievor submit to a periodical health assessment (PHA) in order to determine his fitness to work and/or any limitations and restrictions he might have if he would return to work. No PHA was undergone by the Grievor. In October 2005, the Grievor's physician provided a medical certificate indicating that the Grievor was unfit for duty "indefinitely". Consequently, in November 2005, the Health Services Officer (HSO) assigned a medical profile of "permanent O6" to the Grievor. However, from November 2005 to June 2007, discussions regarding a possible return to work were held between the Force and the Grievor; the Grievor indicated that he would be willing to contemplate a return to work once his health care providers authorized such a return. No medical information was provided by the Grievor indicating that he could return to work.

In June 2008, the Respondent served the Grievor with a Notice of Intention to Discharge on the ground of having a disability. When the Grievor was served with the Notice, the accompanying materials on which the recommendation from the Medical Board would be based were not provided to the Grievor. The Grievor attempted to receive these documents a few times, but the Force did not provide them. The Medical Board convened in January 2010 and provided its report with recommendations to the Force in March 2010. The Grievor was not provided with a copy of the Medical Board report. After receiving the Medical Board recommendations, the Force explored return to work options for the Grievor, but the Grievor refused to participate in a meeting explaining that he had not received the relevant materials in order for him to prepare a response to the Medical Board report. Ultimately, in October 2010, as the Grievor had not provided medical information demonstrating that he was fit to return to work and had not participated in the accommodation process, the Respondent rendered a decision discharging the member.

The Grievor grieved his medical discharge based on a breach of procedural fairness and requested that it be set aside and his medical profile of O6 be rescinded. There were numerous procedural issues between the Grievor and the Office of Coordination of Grievances in the process of this grievance, which ultimately proceeded with Level I submissions in April 2016. The Level I decision was rendered in January 2019 in which the Level I Adjudicator allowed the grievance as the Grievor's right to procedural fairness was breached because the Force had not

provided him with the materials on which the medical discharge decision would be based. The Level I Adjudicator quashed the medical discharge decision and remitted the matter for a new decision. However, he indicated that he could not rescind the Grievor's medical profile of O6.

Although his grievance was allowed, the Grievor requested a review of his grievance by a Level II Adjudicator, stating that the proper remedy for such a breach of procedural fairness would be to rescind his medical profile. The Respondent did not challenge the Level I decision and also agreed to rescind the Grievor's medical profile. He indicated that a new process to assess the Grievor's medical profile would be undertaken and accommodation options would be explored if needed. In his rebuttal, notwithstanding that his requested remedy was granted by the Respondent, the Grievor maintained his position that the grievance as a whole should be reviewed by the Level II to examine the Force's conduct throughout the medical discharge process, including breaches of the *Privacy Act*, procedural fairness, sufficiency of evidence to establish his medical profile and the Health Services Officer's lack of impartiality.

ERC Findings: The ERC first found that the Grievor could not raise issues regarding the HSO's lack of impartiality, abuse of discretion or the fact that the O6 medical profile was not based on sufficient evidence as they were not raised before Level I. The ERC then agreed with the Level I Adjudicator that the Grievor's right to procedural fairness was breached and that the matter should be remitted for a new decision. Therefore, the remaining issues were rendered moot and the circumstances did not meet the criteria to use discretion to nevertheless address these issues raised by the Grievor.

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

Commissioner of the RCMP's Final Decisions

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

Current Legislation Cases:

Conduct Appeals

C-024 – Conduct Authority Decision *(summarized in the January – March 2019* Communiqué*)* 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 dissatisfied with the Appellant's response and subsequently complained to other members at the detachment. 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.* 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. The ERC found that the Respondent made no manifest and determinative error when she found that the Appellant failed to conduct an investigation. The ERC recommended that the Commissioner of the RCMP deny the Appeal, confirm the decision and confirm the conduct measures.

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

On May 15, 2016, a woman, Ms. X, attended an RCMP Detachment and spoke with the Appellant. She sought assistance with a marital matter involving her estranged common law spouse, Mr. X. The details of the conversation between Ms. X and the Appellant are in dispute.

Ms. X left the Detachment feeling dissatisfied and without the information she needed. She contacted another member the following day and disclosed that she had been threatened by Mr. X who said "get away from me before I punch you" and "I can't stand to see you – I could strangle you". She informed the member that she had told the Appellant of the threats Mr. X made against her but she was only told to stay somewhere else and return to the Detachment if she felt threatened. It was confirmed that the Appellant had not opened a Police Reporting and Occurrence System (PROS) file concerning Ms. X the previous day. Other members investigated Ms. X's complaint and Mr. X was charged with two counts of uttering threats.

The Respondent ordered a *Code of Conduct* investigation based on the allegation that the Appellant knowingly failed to open a PROS occurrence and conduct an investigation after receiving information of a domestic violence/uttering threats situation involving Ms. X, thereby neglecting his duty and contravening section 4.2 of the *Code of Conduct*.

Following an investigation, a Conduct Meeting was held. The Respondent found the allegation established and imposed a written reprimand, direction for training on domestic violence and a forfeiture of two days' pay.

The Appellant appealed the Respondent's finding and the imposition of conduct measures on the basis that they were procedurally unfair and clearly unreasonable. The Appellant argued that Ms. X provided different information to him during her initial visit than to the members who conducted the subsequent investigation. He maintained that Ms. X did not portray a threatening situation, but more of a civil dispute over ownership of the shared house. The Appellant also argued that he did conduct an investigation into Ms. X's complaint in accordance with policy.

The ERC recommended that the appeal be denied. The Conduct Appeal Adjudicator agreed and dismissed the appeal, finding that the allegation was established and confirmed the conduct measures imposed by the Respondent.

Former Legislation Cases:

Grievances

G-659 – Relocation/Standing *(summarized in the April – June 2019* Communiqué*)* The Grievor filed a Level I grievance, disputing the 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 Respondent, was the correct responding party. The Grievor maintained that he was grieving the 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. 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*. The ERC recommended that the Commissioner allow the grievance and ensure it is heard on the merits.

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

The Grievor presented a grievance against the Respondent's decision to deny his request for a retirement relocation. During the early resolution phase of the grievance process, the Respondent contested the Grievor's standing. At Level I, the Adjudicator found that the Grievor did not have standing and therefore denied the grievance. The Commissioner accepts the ERC's finding that the Grievor was in fact a member for the purposes of the standing analysis pursuant to subsection 31(1) of the *RCMP Act*. The grievance is allowed and will proceed on the merits.

G-660 – Relocation *(summarized in the April – June 2019* Communiqué*)* The Grievor lived in Crown owned housing with insufficient room for his household goods and effects (HG&E), which were thus stored elsewhere 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. 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 as 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 ERC recommended that the grievance be denied.

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

The Grievor presented a grievance against the Respondent's decision to deny his request to ship his household goods and effects from long-term storage to a property he purchased following his relocation. At Level I, the Adjudicator denied the grievance. The Commissioner accepts the ERC's finding that the Grievor did not present evidence capable of establishing on a balance of probabilities that the impugned decision was inconsistent with relevant authorities. The grievance is denied.