Communiqué – October to December 2019

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

The kinds of cases reviewed by the ERC include:

- under the current *RCMP Act* - appeals of harassment investigation decisions, decisions to discharge an RCMP member (e.g. due to disability or unsatisfactory performance), decisions to dismiss an RCMP member or to impose a financial penalty for misconduct, and decisions to suspend a member's pay and allowances when the member has been suspended from duty; and,

- under the former *RCMP Act* (i.e. for cases commenced prior to changes made to the legislation in late 2014) – disciplinary appeals and appeals of initial decisions for a range of grievance matters (e.g. harassment, medical discharge, travel, relocation or isolated post expense claims).

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

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Findings and Recommendations

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

Current Legislation Cases:

Conduct Appeals

C-030 – Conduct Authority Decision The Appellant took a meal break at a diner, where he was seen looking at a female patron. The Appellant pulled over that patron's vehicle immediately after she left. During the traffic stop, he identified himself to the female, gave her an RCMP business card on which he handwrote his preferred name and personal cell number, and issued no ticket or warning. The female took the business card, later explaining that she "*did not want a ticket*". Subsequently, the female told her friend's fiancé, an RCMP member, about what happened. The member was concerned and made inquiries. He discovered that the Appellant, whom he had never worked with and did not know, was the officer who conducted the traffic stop. He advised a superior of his findings.

Following a *Code of Conduct* investigation in which the Appellant did not clearly explain why he had performed a traffic stop of the female patron and given her his personal cell number, the Respondent issued a written decision finding that the Appellant had contravened section 3.2 of the *Code of Conduct* by abusing his authority as a police officer. The Respondent went on to impose on the Appellant a corrective conduct measure consisting of a forfeiture of six days' pay, as well as remedial conduct measures. The Appellant appeals the finding that he violated the *Code of Conduct*, on a number of grounds. Alternatively, he requests that, if this finding is upheld, his six-day pay forfeiture be overturned or reduced on the basis that it is overly harsh.

ERC Findings: The ERC dealt with the various positions and concerns raised on appeal. First, the Respondent made a procedural error by alleging that the Appellant violated section 3.1, but concluding that he violated section 3.2 of the *Code of Conduct*. While unfortunate, this error did not result in procedural unfairness to the Appellant as it was clear from the record that he knew the case to be met and the jeopardy he faced, and that he was prepared and received an opportunity to respond to the case against him. Second, the Respondent did not err by omitting to direct an investigative inquiry that was based solely on the Appellant's speculation. Third, the Respondent did not ignore relevant factors or rely on irrelevant factors. Lastly, his assessments of the evidence and factual findings did not otherwise evince a manifest and determinative error.

Turning to the matter of conduct measures, the ERC found that the Respondent's imposition on the Appellant of a forfeiture of six days' pay warranted intervention, as the Respondent did not apply the three-part test for selecting appropriate conduct measures. The ERC applied this test. After noting the appropriate range of penalties for the impugned conduct and restating mitigating and aggravating factors, the ERC found that the conduct measure that best reflected the gravity of the misconduct, as well as the nexus of that misconduct and the requirements of the policing profession, was a forfeiture of two days' pay. This measure was in line with the requirements of

the policing profession, as reviewed in the RCMP *Conduct Measures Guide*, exemplified by the penalties ordered by Canadian police services (including the Force) for commensurate conduct.

***ERC Recommendations*:** The ERC recommends that the appeal be allowed in part; specifically, that the component of the Appellant's appeal involving conduct measures be allowed, and that the corrective conduct measure consisting of a forfeiture of six days of the Appellant's pay be reduced to a forfeiture of two days of the Appellant's pay.

C-031 – Conduct Authority Decision The Appellant attended a fast food restaurant while off duty and ordered a cheeseburger. He waited a long time for his burger, which was ultimately placed on a service counter. Upon inspection, his burger seemed raw to him. He began to swear loudly while standing at the service counter, and tried to photograph the burger patty. The restaurant manager, a 21 year-old male, began taking the burger patty off the service counter, at which point the Appellant grabbed his wrist and pulled him with some force. The manager dropped the burger patty behind the service counter and indicated that he would call the police. The Appellant replied that he was a police officer. He then went behind the service counter, removed the burger patty from the floor and photographed it. After receiving a refund and continuing to express himself animatedly for several minutes, the Appellant left. The manager phoned 911 and the Appellant was eventually charged with assault and causing a public disturbance. Those two charges were later stayed.

Following a statutory investigation, a *Code of Conduct* investigation and a conduct meeting, the Respondent issued a written decision wherein he found, among other things, that the Appellant breached section 7.1 of the *Code of Conduct* ("*Discreditable Conduct*") by using inappropriate and unwanted force against the fast food restaurant manager (Decision). The Respondent reasoned that the Appellant's use of force was minor but nonetheless improper, unjustified and ascribable to an inability to control his emotions. The Respondent went on to impose against the Appellant for this contravention a forfeiture of two days' pay. The Appellant is appealing the finding that he violated section 7.1 of the *Code of Conduct*.

ERC Findings: The ERC dealt with the Appellant's arguments on appeal. First, the Appellant did not establish and the record did not disclose that the Decision was reached in a procedurally unfair way. There was no suggestion that the Respondent held a bias or failed to maintain an open mind, nor was there any indication that the Appellant was prevented from having his views heard or considered. Second, the Respondent did not err by framing the Appellant's use of force as a breach of section 7.1 of the *Code of Conduct* or by proceeding with the conduct process on that basis. It was clear from the RCMP *Conduct Measures Guide* (*Guide*) that the alleged use of force fell within the ambit of section 7.1 transgressions. Third, in considering whether the allegation of disgraceful conduct was established, the Respondent did not commit any errors of fact simply by weighing the evidence before him in ways the Appellant disliked.

However, the ERC found that the Respondent made an error of mixed law and fact by omitting to properly consider and apply to the facts before him the test for resolving if the Appellant's use of force was likely to bring discredit to the Force, contrary to section 7.1 of the *Code of Conduct*. That test is how the "*reasonable person*" with knowledge of all relevant circumstances, including the realities of policing in general and the realities of RCMP policing in particular, would view the Appellant's use of force against the fast food restaurant manager. Pursuant to paragraph 45.16(2)(b) of the *RCMP Act*, the ERC concluded that the Commissioner should allow the appeal on this basis and make the finding that should have been made. Specifically, the aforementioned reasonable person would see the Appellant's use of force, which was clearly inappropriate, as likely to bring discredit to the RCMP, contrary to section 7.1. The reasonable

person would afford an off-duty police officer some leeway in raising concerns over a restaurant order being undercooked, but that leeway would not include tolerating the officer grabbing and pulling the restaurant manager against his will, even if the use of force lasted for only a second. The reasonable person would be troubled if the RCMP, having considered the evidence, found the officer's use of force to be serious enough to justify bringing a criminal charge of assault against the officer, regardless of whether the charge was later stayed. Lastly, the reasonable person, aware of the principles of the *Guide*, would concede that, while the officer's use of force was relatively minor and did not lead to a criminal conviction or to an injury, it still fell within the scope of conduct likely to bring discredit to the Force, contrary to section 7.1 of the *Code of Conduct*, as described in the *Guide*.

The ERC found that the two-day pay forfeiture ordered on the Appellant for his breach of section 7.1 of the *Code of Conduct* should be confirmed. The Appellant did not establish and nothing in the record indicated that the decision to impose that conduct measure warranted intervention.

***ERC Recommendations*:** The ERC recommends that the Commissioner allow the appeal of the Respondent's finding that the Appellant engaged in discreditable conduct, given the Respondent's omission to consider and apply the governing legal test. It further recommends that the Commissioner make the finding the Respondent should have made in this regard, specifically, that the aforementioned reasonable person would view the Appellant's off-duty use of force on a fast food restaurant manager as likely to bring discredit to the RCMP, contrary to section 7.1 of the *Code of Conduct*. The ERC further recommends that the Commissioner confirm the conduct measure imposed on the Appellant, that being a forfeiture of two days' pay.

Other Appeals

NC-038 – Medical Discharge The Appellant had been on sick leave since January 2014. She or her health practitioners provided information about her condition at certain intervals during her absence. In July 2016, the Appellant's medical profile was modified and indicated that she was now permanently "unfit for duty." The Appellant was informed that this change meant that she was no longer fit for duty with the Force. Despite this finding, the Appellant provided the Force with some medical reports in support of her gradual return to work. However, the Appellant's medical profile remained unchanged because, according to the Force, these reports did not provide any new information on the improvement of the Appellant's health condition.

On October 13, 2016, a preliminary recommendation to discharge the Appellant was sent to the Employee Management Relations Officer (EMRO), which recommended that the Appellant be medically discharged. On November 16, 2016, the EMRO sent the Respondent a recommendation to discharge the Appellant. On November 21, 2016, the Respondent sent the Appellant a Notice of Intent to Discharge (Notice of Intent) and a copy of the documents supporting the Notice of Intent. The Notice of Intent informed the Appellant of her right to submit a written response to the Notice of Intent and of her right to request a meeting with the Respondent for the purpose of making oral submissions.

On December 7, 2016, the Appellant provided the Respondent with her written response and requested a meeting with the Respondent. On January 16, 2017, the Respondent ordered that the Appellant be discharged. In his written decision, he indicated that there had been no request for a meeting. The Appellant appealed the Respondent's decision.

ERC Findings: The ERC found that the process followed by the Respondent violated the principles of procedural fairness, in particular the Appellant's right to be heard. As the decision-maker, the Respondent did not indicate that the Appellant had made a request for a meeting or provide written reasons as to why he would have denied the request. Rather, in his final decision report, he erroneously stated that there had been no request for a meeting. The ERC emphasized that the discharge process must strictly adhere to the principles of procedural fairness, including the right to be heard, and that a member's right to request a meeting with the decision-maker must be taken seriously. By ignoring the Appellant's request for a meeting and by failing to exercise his discretion, the Respondent breached the principles of procedural fairness by violating the Appellant's right to be heard.

ERC's Recommendation: The ERC recommends that the Adjudicator allow the appeal and remit the file to another decision-maker for a new decision.

NC-039 – Harassment The Appellant reported indirectly to the Alleged Harasser. Over time, friction developed between them. The Appellant perceived that certain workplace directives or initiatives had been implemented by the Alleged Harasser to target him and make him want to work elsewhere. These included a change in the Appellant's schedule and a plan to rotate members out of the Appellant's section. The Appellant also felt that the Alleged Harasser had acted in a disrespectful and belittling manner towards him during some of their interactions by yelling and criticizing him. The Appellant eventually lodged a harassment complaint against the Alleged Harasser. In the course of the subsequent harassment investigation, the Appellant provided a statement, as did several witnesses. The Alleged Harasser did not provide a statement during the investigation. However, the Alleged Harasser later submitted a rebuttal to the investigation report and in so doing addressed the Appellant's version of the facts. The Appellant was not provided with an opportunity to respond to the Alleged Harasser's rebuttal.

The Respondent found that the Complaint was not established as the Alleged Harasser's actions did not, in his view, amount to harassment. Certain practices which had been implemented and may have impacted the Appellant reflected organizational needs. As for specific instances of alleged disrespectful behavior, the Respondent observed that the Appellant and Alleged Harasser had different perspectives regarding certain issues and that their discussions may have been "*more spirited or animated than what was typically common amongst other working relationships*". However, the Respondent found that no witnesses had observed any tense exchanges between the Appellant and Alleged Harasser, and that the Alleged Harasser's communications when meeting with the Appellant were not disrespectful in nature. The Appellant lodged an appeal of the Respondent's decision.

ERC Findings: The ERC found that the Respondent's decision revealed a manifest and determinative error of fact. The Respondent's finding that no witnesses had observed any tense exchanges between the Appellant and Alleged Harasser, and that the Alleged Harasser's communications when meeting with the Appellant were not disrespectful in nature, could not be reconciled with the evidence of Witness A. Witness A, in a statement to investigators, claimed to have observed the Alleged Harasser raise his voice at the Appellant in a manner which made her uncomfortable and appeared to have the same effect on the Appellant. Witness A characterized the behavior as something that "***shouldn't happen***". The Respondent's failure to address this evidence raised a concern that the Respondent may not have properly considered whether harassment had occurred, either on a cumulative basis or as a single isolated event. The ERC also found that the failure to provide the Appellant with an opportunity to respond to the Alleged Harasser's version of events during the investigation of the harassment complaint resulted in a breach of procedural fairness.

ERC Recommendation: The ERC recommends that the Final Adjudicator allow the appeal and remit the matter to a decision-maker for a new decision.

NC-040 – Harassment The Appellant and the Alleged Harasser worked together in the Recruiting Section of "X" Division. The parties' working environment was very friendly and members would play tricks on each other and talk openly about sexuality. On September 3, 2015, the Alleged Harasser met with the Appellant while he was the acting supervisor to discuss some shortcomings he saw in her. She was hurt by the Alleged Harasser's comments and later refused to work with him. On November 3, 2015, the section supervisor held a meeting between the Appellant and the Alleged Harasser to resolve the conflict, but the situation was not resolved.

On November 4, 2015, the Appellant filed a harassment complaint against the Alleged Harasser comprising six allegations. The allegations related to events that took place between March and November 2015. The Respondent appointed two investigators to investigate these allegations. The investigators met with several witnesses and interviewed the Appellant twice. The parties received the preliminary report in May 2016 and the Appellant was given the opportunity to comment on it. In his decision, the Respondent criticized the work atmosphere in the Recruiting Section, indicating a lack of professionalism in the workplace. He concluded that the Alleged Harasser had indeed made the remarks alleged in the complaint, but he could not conclude that the Alleged Harasser knew or should have known that his words would offend the Appellant in view of her actions and the prevailing working atmosphere in the section.

The Appellant appealed this decision, arguing that the Respondent had not considered all of the evidence, that he had misinterpreted it and that he had considered evidence that had not been disclosed to him before the decision was rendered.

ERC Findings: The ERC found that the Respondent's failure to mention the audio recording provided by the Appellant did not support a finding that the decision was clearly unreasonable. Indeed, the investigators argued that after having received the Appellant's response to the preliminary report and the audio recording, they were of the opinion that the Appellant had not brought any new elements that would merit a supplemental investigation. The Respondent also indicated that the audio recordings were included in the documents provided to him so that he could make his decision. The ERC also found that the Appellant did not mention any error by the Respondent in his assessment of the evidence, but that she had reiterated the evidence by concluding that it demonstrated that she had been harassed. The ERC found that the investigators had to question the Appellant on issues that had been raised by witnesses and that they were not biased in doing so. Finally, the ERC found that the version of the facts as stated by the Alleged Harasser in his testimony could not be considered new facts.

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

NC-041 – 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. As a release condition, the Appellant could not use a computer or a smartphone with data/internet service. Upon receiving the Notice of Intent (NOI) to order a SPA, the Appellant consulted a Member Workplace Advisor (MWA), who did not inform him that he had the right to be represented by the Member Representative (MR) Directorate. The Appellant prepared a brief NOI Response. The Respondent, after considering the evidence and the NOI Response, ordered the SPA. The

Appellant appealed the decision and argued breach of procedural fairness as his MWA did not inform him of his right to be represented in the SPA process by the MR Directorate and he said he therefore submitted an inadequate NOI Response.

ERC Findings: The ERC found that the Appellant was owed a high degree of procedural fairness in the SPA process, including the right to MR representation and assistance upon request. The ERC found that the Respondent clearly informed the Appellant of his right to advice and assistance by the MR Directorate in the NOI to order a SPA and that this notification was sufficient, in and of itself, to meet the high degree of procedural fairness required. The ERC found that the Respondent reminded the Appellant of this right through his lawyer who had represented him for the purpose of obtaining an extension of time to submit his NOI Response, and that this reminder was over and above what was required to be procedurally fair. The ERC found that the Appellant had the assistance of a lawyer for the purpose of seeking an extension of time, and the assistance of a MWA. Finally, the ERC found that the Appellant had an obligation to inform himself of RCMP policy regarding his rights. The ERC concluded that the Respondent's decision was not reached in a manner that contravened the applicable principles of procedural fairness.

ERC Recommendation: The ERC recommends that the Commissioner dismiss the Appeal and confirm the Respondent's SPA Order decision.

NC-042 – Harassment On July 8, 2015, the Appellant made two harassment complaints, which were merged, against an Acting Staff Sergeant who, for a period, had supervised him (Alleged Harasser). The Appellant contended that the Alleged Harasser: (1) behaved toward him in an aggressive, abusive, intimidating and hostile manner and (2) treated him in ways which were both racially discriminatory and personally humiliating to him. This harassment complaint became the subject of a joint harassment and *Code of Conduct* investigation wherein seven (7) witnesses were interviewed. During the investigation, the Appellant informed an official that the Alleged Harasser had interfered with one of the witnesses. The official brought this issue to the attention of the investigators. The Appellant again raised this issue in his rebuttal to the preliminary investigation report as it had not been addressed. In a decision dated December 27, 2016, the Respondent found that the harassment complaint was not established. In her decision, the Respondent did not address the Appellant's contention that the Alleged Harasser interfered with the investigation.

ERC Findings: The ERC found that the investigation was deficient as the investigators failed to address crucial evidence in that the Appellant's allegation of interference was not addressed with either the Alleged Harasser or the witness the Alleged Harasser allegedly approached. The ERC further found that, as the investigation was deficient, the Respondent's decision, based on this investigation, was equally deficient. Moreover, the Respondent's decision was clearly unreasonable as the reasons for this said decision were insufficient, the Respondent having not addressed a significant issue raised by the complainant.

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

NC-043 – Medical Discharge The Appellant stopped working for medical reasons in November 2003. A few subsequent attempts to return to work were unsuccessful. In September 2006, the Appellant was suspended with pay, after which his medical status varied between unfit for an indefinite period, unfit for a definite period, fit for duty and, finally, fit for duty with restrictions. Beginning in 2014, the Force's Occupational Health Services obtained some

medical reports concerning the Appellant's health condition. In January 2017, the Appellant's medical profile was modified to reflect that he was medically unfit for duty with the Force.

Shortly thereafter, a recommendation to medically discharge the Appellant was sent to the Respondent. On April 12, 2017, the Respondent sent the Appellant a Notice of Intent to Discharge (Notice of Intent). The Notice of Intent informed the Appellant of his right to submit a written response to the Notice of Intent and of his right to request that the Respondent be recused as the decision-maker. On May 27, 2017, the Appellant provided the Respondent with his written response, in which he requested that the Respondent be recused as the decision-maker. The Appellant supported this request by pointing out that the Respondent had previously served as the Employee Management Relations Officer (EMRO) and, in this position, had been involved in managing the Appellant's medical file.

The Respondent dismissed the recusal request and ordered the Appellant's discharge. The Appellant appealed the Respondent's decision.

ERC Findings: The ERC found that the Respondent's decision to deny the request that he recuse himself violated the principles of procedural fairness. The Respondent had actively participated in managing the Appellant's medical file when he was the EMRO. This past involvement gave the impression that the Respondent, in his subsequent role as decision-maker regarding the Appellant's medical discharge, might have taken into account information and perceptions acquired in his role as EMRO. The Respondent had before him evidence of his own actions in the sequence of events that led to the Appellant's medical discharge. The ERC noted that the discharge process requires a high level of procedural fairness, which includes the right to an impartial decision-maker. The Respondent's prior involvement as the EMRO in the Appellant's file gave rise to a reasonable apprehension of bias and required that he recuse himself as the decision-maker.

ERC Recommendation: The ERC recommends that the Adjudicator allow the appeal and remit the file to another decision-maker for a new decision.

Former Legislation Cases:

Disciplinary Appeals

D-136 – Adjudication Board Decision Two allegations of disgraceful conduct under section 39(1) of the *1988 Regulations* were brought against the Appellant which relate to the same series of events. In April 2010, the Appellant was seen by members of the public driving her vehicle while visibly impaired. The Appellant had drove partially into a ditch and had to request assistance from members of the public to have her vehicle removed from the ditch. She became agitated and defensive, and misled them about her identity. The Appellant was driven to a nearby beach under the promise that she would not be driving. She later drove away from the beach and after passing an RCMP vehicle, she drove on a private road and partially concealed her vehicle in bushes. The Appellant was later found by the RCMP walking along the highway.

Following a hearing, the Adjudication Board (Board) found both allegations established. A sanction hearing began with each party calling expert witnesses to testify on the Appellant's psychological disorders. The Board ordered the Appellant to resign or be dismissed within

fourteen days. The Appellant appealed this decision arguing that the Board did not have proper reasons to deviate from her expert witness' testimony and imposing a sanction that was too harsh given the mitigating factors. The Appellant also filed on appeal a decision from the Commissioner overturning a Board decision, which had found an allegation of disgraceful conduct established against the Appellant.

ERC Findings: The ERC first found that the Commissioner's decision was admissible in the appeal proceedings as it was relevant and rendered after the Board's decision in this case. The ERC further found that the Board did not make any findings contrary to the Appellant's expert's opinion as this expert had not testified or provided evidence on the issue of a nexus between the Appellant's actions and her disorders. Conversely, the Respondent's expert witness had testified that the disorders could not explain the Appellant's providing a false name and partially concealing her vehicle in bushes. Lastly, the ERC found that, notwithstanding the Commissioner's decision regarding the Appellant's previous misconduct, dismissal remained warranted.

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

Grievances

G-667 – Travel This grievance is a joint grievance filed by two members of the same team. From May 18-20, 2010, the Grievors attended a training session for their team, which was a 5-hour drive from their detachment. The Grievor was an instructor for this training session. The Grievors, in order to be at the training on May 18 at 08:30, departed the day before the training started.

Prior to departing, the Grievor called the Respondent in order to request the use of a rental vehicle, which was authorized by the Respondent. During this same call, the Grievor informed the Respondent that both he and the other Grievor would be travelling together and he would try to convince the other Grievor to depart a day early. The crux of the grievance is whether the Grievors were pre-authorized to depart the day before the training. According to the Grievors, the Respondent did not deny their departure a day early. However, according to the Respondent, he did not pre-authorize the Grievors to depart on May 17, 2010.

During the ER phase, the issue of the provision of documents came up. Both parties provided their views on the issue and a Level I Adjudicator's decision was sought. The Adjudicator ordered the Respondent to provide the Grievors with a copy of the policies on which he based his decision. After much correspondence, the Grievors requested another decision from the Level I Adjudicator for "non-provision of ordered materials". In a second decision, the Level I Adjudicator found that the Respondent had provided all that he was obliged to.

The Level I Adjudicator denied the grievance as the Grievors did not have a written pre-authorization as per the Treasury Board Travel Directive to depart a day before the start of the training.

ERC Findings: The ERC found that the Grievors are not entitled to the reimbursement of the expenses incurred on May 17, 2010 as the travel policies governing the matter expressly required that pre-authorization be granted in order to be reimbursed for travel benefits. The Grievors did not obtain pre-authorization for the first day of travel. The ERC further found that the fact the Grievor, and other members, received reimbursement for previous travel expenses that were not pre-approved as per policy is irrelevant as this grievance does not relate to whether

or not the Grievor and other members were wrongly reimbursed expenses to which they were not entitled to.

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

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

In this joint grievance, the Grievors challenged the Respondent's decision to partially deny their expense claim for travel the day before mandatory Underwater Recovery Team training. The Level I Adjudicator denied the grievance. The ERC recommended the grievance be denied on the basis that the Grievors failed to obtain written pre-authorization to travel early. The Commissioner finds that the Grievors had authorization to travel for the mandatory training and the Respondent could not readily preclude them from travelling a day early pursuant to the National Joint Council Travel Directive because of the driving distance involved. The grievance is allowed.

G-668 – Harassment The Grievor is employed by a community police services. On September 10, 2008, she signed a memorandum of understanding with her immediate supervisor to work part-time. On June 2, 2009, she signed a second agreement with her supervisor to receive acting pay for having worked part-time as a corporal for six months.

The Alleged Harasser replaced the Grievor's immediate supervisor as of August 4, 2009, as the Officer in Charge of the section. Among other things, the Alleged Harasser allegedly refused to ratify the agreement entered into between her predecessor and the Grievor and requested that the Grievor's work be more closely supervised.

On November 20, 2009, the Grievor filed a harassment complaint against the Alleged Harasser. This complaint included four allegations. The Human Resources Officer (HRO) concluded that the allegations did not meet the definition of harassment, and accordingly dismissed the complaint at the screening stage.

The Grievor filed a grievance against this decision. During the early resolution phase, the parties reached a partial agreement that Allegations 1 and 2 would be dealt with through the grievance process. However, neither party addressed the other allegations in their submissions on the merits and only dealt with the allegations agreed upon.

The Adjudicator indicated that there had been an agreement on Allegations 3 and 4, which was not the case. He noted that the Office for the Coordination of Grievances (OCG) asked the parties to send him their submissions on Allegations 1 and 2 only, which was not the case either. The Adjudicator concluded that, since the Respondent was the HRO and the Acting Responsible Officer, there was an apparent conflict of interest. Therefore, the Respondent should not have made the final decision to dismiss the complaint but should have instead referred it to the Deputy Commissioner for a final decision. However, since there had been a partial agreement, the Adjudicator concluded that it was not necessary to refer the complaint for a new decision. He accordingly denied the grievance.

The Grievor challenged the decision of the Level I Adjudicator by emailing the OCG, but did not provide the duly completed grievance form. In her email, she challenges the Level I Adjudicator's conclusion that there was agreement on the majority of the allegations. The Grievor did not mention Allegations 3 and 4 but stated that there had been no agreement on

Allegation 2. The OCG sent this email to the Respondent, indicating that it constituted the Grievor's written submissions.

ERC Findings: The ERC found that the Respondent was required to assess the allegations not only one by one, but also as a whole. By not considering the allegations as a whole, she did not attempt to find out whether the Alleged Harasser had participated in a series of undesirable incidents over a given period. The ERC also found that the Respondent should have examined the allegations from the perspective of the concept of abuse of authority before dismissing the complaint at the screening stage. Finally, the ERC found that the OCG had failed in its duty to act fairly by not asking the Grievor to provide her submissions at Level II or, at the very least, by not verifying with her to see if her email constituted her submissions.

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

G-669 – Harassment The Grievor is employed by a community police services section. On September 10, 2008, she signed a memorandum of understanding with her immediate supervisor to work part-time. The Alleged Harasser replaced the Grievor's immediate supervisor as of August 4, 2009, as the Officer in Charge of the section. In the spring of 2010, the Alleged Harasser sent an email to herself indicating that due to the Grievor's part-time job and numerous absences "for various reasons", the Grievor did not seem to be willing to assume the duties of a corporal position. The Grievor had access to this email under the *Access to Information Act* as part of a grievance process. On November 7, 2009, the Alleged Harasser allegedly also wrote in an email that the Grievor had planned a sick leave for financial reasons.

On August 18, 2010, the Grievor filed a harassment complaint against the Alleged Harasser in relation to these two emails. The complaint included two allegations. On March 8, 2011, the Human Resources Officer (HRO) concluded that Allegation 2, if established, could meet the definition of harassment. The Alleged Harasser sent her response to the allegations to the HRO on March 24, 2011. On April 27, 2011, the HRO concluded that the allegations were unfounded and accordingly dismissed the complaint.

The Grievor filed a grievance against this decision. A Level I Adjudicator determined that the HRO should have referred the complaint to the Responsible Officer for a final decision. The complaint was then referred back to the screening stage. The HRO's report was then sent to the Respondent for a final decision. The Respondent found that neither of the two allegations met the definition of harassment. He agreed with the recommendation of the HRO, although the latter had concluded that Allegation 2 could constitute harassment if it were established.

The Level I Adjudicator indicated that his mandate was limited to reviewing the Respondent's decision regarding the process followed and not the merits of the decision. The Adjudicator indicated that the Grievor had not explained how the Respondent had erred in the process. He therefore denied the grievance.

In her submissions, the Grievor reiterated the facts that led to the alleged harassment and indicated that it was indeed harassment. At Level II, she maintained that the Respondent did not properly apply the definition of harassment. The Respondent indicated that he had followed the policy and had also relied on the questions proposed by the Treasury Board in assessing the complaint. According to him, the Alleged Harasser had acted within her management rights and the allegations did not meet the definition of harassment.

ERC Findings: The ERC found that the Respondent erred in his finding that Allegation 2 did not meet the definition of harassment. Rather, the Respondent analyzed whether the allegation might be substantiated and, in doing so, bypassed the screening stage. The ERC also concluded that the Respondent should have considered the allegations not only separately, but also as a whole. Finally, the ERC found that the Respondent should have analyzed the allegations by applying the concept of abuse of authority.

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

G-670 – Harassment The Alleged Harasser was the Grievor's immediate supervisor. At some point in September 2009, she asked the Grievor for a summary of the work she had done during the week of September 14, 2009. The Grievor requested justification for this request, which she did not get. In October 2009, the Alleged Harasser allegedly humiliated and confronted the Grievor in front of her colleagues, asking her why she was not wearing her uniform, even though her colleagues were also in civilian clothing.

On November 20, 2009, the Grievor filed a harassment complaint against the Alleged Harasser. This complaint included two allegations. The Alleged Harasser sent her response to the allegations to the Human Resources Officer (HRO) on January 20, 2010. On February 17, 2010, the HRO concluded that the allegations did not meet the definition of harassment and accordingly dismissed the complaint. The Grievor filed a grievance against this decision. A Level I Adjudicator determined that the HRO should have referred the complaint to the Responsible Officer for a final decision. The complaint was then referred back to the screening stage. The HRO's report was sent to the Respondent for a final decision.

In a new decision, the Respondent concluded that neither allegation met the definition of harassment and dismissed the harassment complaint at the screening stage.

The Grievor filed a second grievance with respect to the Respondent's decision regarding Allegation 1 concerning the request related to the Grievor's work. The Level I Adjudicator indicated that his mandate was limited to reviewing the Respondent's decision regarding the process followed and not the merits of the decision. The Adjudicator indicated that the Grievor had not explained how the Respondent had erred in the process and, accordingly, he denied the grievance.

ERC Findings: The ERC found that the Respondent erred in his finding that Allegation 1 did not meet the definition of harassment. Rather, the Respondent analyzed whether the allegation might be substantiated and, in doing so, bypassed the screening stage. The ERC also concluded that the Respondent should have considered the allegations not only one by one, but also as a whole. Finally, the ERC found that the Respondent should have analyzed the allegations by applying the concept of abuse of authority.

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

G-671 – Harassment The Alleged Harasser was the Grievor's immediate supervisor. On January 11, 2013, the Grievor submitted an access to information request in the context of a grievance not related to the present grievance. As a result of the request, the Grievor received several documents. These documents included a performance appraisal written by the Alleged Harasser, which the Grievor considered to be entirely detrimental to her and which had been written while she was on sick leave. The Grievor became aware of this appraisal only once she received the documents through the access to information request.

The Grievor submitted a harassment complaint on June 11, 2013, against this appraisal. On June 18, 2013, the Responsible Officer rendered a decision on the complaint, determining that it did not meet the definition of harassment and that the Alleged Harasser had followed the performance management policy.

The Grievor filed a grievance against this decision. She argued that the appraisal did constitute harassment, that all of the events that had occurred since August 4, 2009, demonstrated that there had been several attacks on her and that they met the definition of harassment. The Level I Adjudicator denied the grievance on the grounds that the Grievor had failed to demonstrate how the Respondent's decision was inconsistent with the policies and that she had only expressed her opinion regarding her performance appraisal.

ERC Findings: The ERC found that the Respondent erred in his finding that the allegation did not meet the definition of harassment. Indeed, given the level of detail in the allegation, it was not clear at first glance that the allegation did not meet the definition of harassment. Whether the manner in which the performance appraisal had been written might constitute harassment was an issue that needed to be investigated and analyzed further. Finally, the ERC found that the Respondent should have analyzed the allegation by applying the concept of abuse of authority.

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

G-672 – Harassment The Alleged Harasser was the Grievor's immediate supervisor. On January 11, 2013, the Grievor submitted an access to information request in the context of a grievance not related to this grievance. As a result of the request, the Grievor received several documents, including an email that the Alleged Harasser had sent to herself. The email stated that she believed that the Grievor had asked to return to full-time employment just before her sick leave so that she could be paid full-time rather than part-time during her sick leave.

The Grievor filed a harassment complaint on August 18, 2010, against the Alleged Harasser for writing this email. Initially, the Human Resources Officer (HRO) determined that the allegation did not meet the definition of harassment and dismissed the complaint. A Level I Adjudicator referred the complaint to the Responsible Officer (RO), since the HRO did not have the authority to dismiss the complaint. The Alleged Harasser then submitted her comments. The RO determined that the allegation was unfounded in light of the Alleged Harasser's explanations.

The Grievor filed a grievance against this decision. However, this case involves a harassment allegation that was dealt with in a previous case. In fact, the Grievor filed two complaints related to the same decision regarding this allegation. Although the Adjudicator commented on the fact that it was the same allegation, he nevertheless considered the merits of the grievance and denied it since the Grievor had failed to demonstrate how the Respondent's decision was inconsistent with policy.

ERC Findings: The ERC found that this file had become moot since its subject matter had been dealt with in a previous grievance.

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

G-673 – Harassment The Alleged Harasser was the Grievor's immediate supervisor. On January 11, 2013, the Grievor submitted an access to information request in the context of a

grievance not related to this grievance. As a result of the request, the Grievor received several documents, including two emails written by the Alleged Harasser and sent to the Officer in Charge of the section of the parties. These concerned operational activities from which the Grievor had asked to be exempted since she could not make childcare arrangements for her three young children. According to the file, these emails were requested by the Officer in Charge who had recently arrived in the section.

On June 11, 2013, the Grievor filed a harassment complaint against the Alleged Harasser. On June 12, 2013, the Human Resources Officer (HRO) requested clarification from the Grievor and informed the Alleged Harasser that a complaint had been filed against her. The Officer in Charge of Human Resources (Respondent) rejected Allegation 1 but accepted Allegation 2 as possible harassment. The Alleged Harasser then submitted her comments. The Respondent made a decision regarding Allegation 2. He determined that it was unfounded in light of the Alleged Harasser's explanations.

The Grievor filed a grievance against this decision. She argued that the emails did constitute harassment, that all of the events that had occurred since August 4, 2009, demonstrated that there had been several attacks on her and that they met the definition of harassment. The Grievor stated that the Respondent had not examined all of the evidence provided. The Level I Adjudicator dismissed the grievance since the Grievor had failed to demonstrate how the Respondent's decision was inconsistent with policy.

ERC Findings: The ERC concluded that the Grievor had not discharged her burden of demonstrating that the Respondent's decision violated applicable policies or the principles of procedural fairness. Although the Grievor indicated that she did not agree with the Respondent's assessment of the evidence, she did not identify any factual or procedural errors made by him.

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

G-674 – Relocation On April 1st, 2011, the Grievor was issued an A22-A transferring him from one province to another. As it was a cost transfer, the Grievor put his house for sale shortly after and it was actively on the market during spring, summer and fall 2011. The Grievor owns a 25' travel trailer which he situated on a seasonal camping site for the summer of 2011. He was later authorized to relocate via his private motor vehicle (PMV). In September 2011, the Grievor had to remove the trailer from the seasonal site and he brought it home. However, the Grievor indicated that a covenant where his home was located prevented him from keeping the trailer at his residence because it was longer than 18'. As his house had yet to be sold, the Grievor put his trailer into storage for the winter.

The Grievor accepted an offer on his property in December 2011 and relocated in January 2012 with his Household goods and effects. However, he was unable to travel with his trailer as it was not accessible in the storage facility because other trailers were parked in front of his. The Grievor decided to leave his trailer behind for the time being. In the spring of 2012, the Grievor was informed that his trailer was now accessible and he could pick it up. Thus, he travelled from his new posting and stayed at his daughter's residence. Upon his return, the Grievor requested the 50% kilometric rate allowed for trailers by the IRP. He did not claim mileage for his PMV nor for accommodation or meals. His request was denied.

The Grievor filed a grievance requesting to be paid the amount of $145.62. The Level I Adjudicator denied the grievance. According to him, the IRP was clear that the member was entitled to a kilometric rate “when relocating”, not after.

ERC Findings: The ERC found that the IRP did not provide for reimbursement of travel expenses on subsequent travels related to the initial relocation once the travel to the new location was completed. Further, the ERC found that the Grievor had not provided evidence that his situation met the definition of exceptional circumstances.

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

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

The Grievor challenged a decision by the Respondent to deny his relocation related expense claim comprising a kilometric allowance and a toll related to transporting a travel trailer to his new post. At Level I, the Adjudicator denied the grievance primarily on the basis that the Grievor did not obtain pre-authorization to transport the trailer after the moving day. The Grievor sought a review at Level II. The ERC recommended that the grievance be denied on the basis that policy required travel to the new post to be made in one trip with limited exceptions. The Commissioner allows the grievance finding that the expenses were envisioned under the relevant policy without resort to invoking exceptional circumstances.

G-675 – Time Limits In late 2011, the Grievor commenced a secondment from his office in one location in a metropolitan area to another location within the same metropolitan area. In early January 2012, the Grievor and Respondent engaged in a discussion about the Grievor’s entitlement to meal allowance claims for the time period after January 12, 2012, while the Grievor was on secondment. The Respondent claimed that she had advised the Grievor in early January 2012 that no meal claims would be authorized after January 12, 2012.

Ten months later, in November 2012, the Grievor emailed the Respondent indicating that he believed, based on his review of the applicable policies that he was on travel status during his secondment. The Grievor asked the Respondent if the change in travel status would result in him being entitled to meal expenses for the duration of his secondment. The Grievor relied on provisions of the Chapter VI.I of the RCMP Administrative Manual entitled *“Travel Directive” (RCMP Travel Directive)* and the *National Joint Committee Travel Directive* to assert that he was entitled to 75% meal allowance entitlement because he was on travel status. The Respondent responded to the Grievor’s November 2012 email by explaining that the Grievor’s entitlement to a reimbursement of meal expenses was now an open question to be determined by subject matter experts. The Grievor later submitted meal expense claims for a period from January to December 2012. In an email reply to the Grievor on December 18, 2012, the Respondent denied the meal claims for the January to December 2012 period, stating that the Grievor had been advised in early January 2012 that he would no longer be entitled to reimbursement of meal claims after January 12, 2012. Twenty-eight days after receiving the December 18, 2012 email from the Respondent, the Grievor grieved the Respondent’s decision. During the Early Resolution Phase of the grievance process, the Respondent challenged 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 in early January 2012. The Grievor resubmitted his

grievance at Level II arguing that because he had provided new information to the Respondent in November 2012, the December 2012 meal expense denial became a new grievable decision. The matter was referred to the ERC for review.

ERC Findings: The ERC found that the grievance was presented on time because the December 2012 decision could be seen as a new grievable decision based on new information that the Grievor had provided in November 2012. The Respondent had considered and addressed the information provided in November 2012 in making the December 2012 decision. The grievance was therefore presented within the thirty-day limitation period outlined in paragraph 31(2)(a) of the *RCMP Act.*

ERC Recommendation: The ERC recommended that the Commissioner allow the grievance on the ground that it was timely. The ERC further recommended that if the Commissioner agrees with this approach, she ask for merit submissions from both parties instead of sending the matter back to a Level I Adjudicator.

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

The Grievor challenged the Respondent's decision to deny his meal allowance claims. During early resolution, the Respondent contested timeliness, claiming the grievance was filed more than one year after the date on which the Grievor reasonably ought to have known of her decision to deny the meal allowance claims which exceeded the limitation period of 30 days set out in paragraph 31(2)(a) of the *RCMP Act*. At Level I, the Grievor argued the Respondent did not communicate her refusal in January 2012, as alleged. The Level I Adjudicator was persuaded that the refusal was communicated in January 2012, and dismissed the grievance. The Grievor sought a review at Level II and the matter was referred to the ERC. The ERC found that the subsequent inquiry of the Grievor, made on November 2, 2012, concerned a different policy, and combined with the response and subsequent inquiries by the Respondent, resulted in a distinct decision on December 18, 2012. Accordingly, the ERC found the grievance, filed on January 15, 2013, complied with the limitation period. The Commissioner accepts the ERC's finding that the grievance was presented within the prescribed period. In the interest of time, the Commissioner directs that submissions on the merits be obtained from the Parties and provided to her for a final decision.

G-676 – Harassment In December 2007, the Grievor submitted a harassment complaint against two of her superiors based on events that occurred from 2004 to 2006. The harassment complaint contained a multitude of allegations. The Grievor ascribed the adverse treatment by her superiors to discrimination based on her sexual orientation and race. Even though the complaint was received one and half years after the last allegation, a fact-finding investigation was authorized, owing to the number of allegations. The fact-finding investigation was of a limited nature. It was not a full investigation as only the Grievor and one of the alleged harassers were interviewed. No independent witnesses were interviewed in respect of the allegations. In October 2010, the Respondent issued a Decision rejecting the complaint on the basis that the allegations did not meet the *prima facie* definition of harassment. The Grievor grieved the Respondent's Decision and submitted that the Decision was made further to an improperly conducted process.

The Level I Adjudicator denied the Grievance on the ground that the Respondent's Decision to screen out the harassment complaint was reasonable and consistent with the Treasury Board's *Policy on Prevention and Resolution of Harassment in the Workplace* and Chapter XII.17 of the

RCMP Administrative Manual entitled "*Prevention and Resolution of Harassment in the Workplace* (AM XII.17). The Adjudicator found that there was no harassment nor was there evidence of discrimination based on race or sexual orientation. The Adjudicator also asserted that the Grievor's concerns with the investigational process should have been the subject of separate grievances rather than being incorporated into a grievance of the Respondent's Decision.

At Level II, the Grievor submitted that it was an error for the Adjudicator to refuse to consider her allegations that errors were made during the harassment investigation process on the basis that those errors were not personal acts or decisions of the Respondent. The Grievor submitted that the fact-finding investigation was a full investigation rather than a part of the screening process and that the investigation was flawed. The Grievor asserted that both the Adjudicator and the Respondent did not properly consider whether the allegations set out in the complaint, individually or holistically, amounted to harassment. The matter was referred to the ERC for review.

ERC Findings: The ERC found that the Respondent had made a Decision to screen out the harassment complaint. Within the Decision, the Respondent endorsed the findings of the Human Resources Officer (HRO) who recommended a screening out. The ERC found that alleged errors made in the processing of a complaint that were not personal actions or decisions of the Respondent, such as the findings of the HRO, can be considered in assessing whether the complaint was properly screened.

The Respondent and HRO did not screen the complaint in accordance with the applicable policy authorities and the relevant legal test which required the Respondent to assess whether the allegations contained within the complaint, if true, fell within the definition of harassment as set forth in AM XII.17. The ERC found that the Grievor's complaint should have been screened into the harassment complaint process, including the initiation of a full investigation. The ERC also found that harassment complaint process was not timely as it took almost 3 years to screen out the Grievor's complaint.

ERC Recommendation: The ERC recommends that the Commissioner allow the grievance on the ground that the Respondent's Decision to screen out the harassment complaint was not consistent with the relevant harassment authorities. Given that the events in question that took place date back to 2004 to 2006, it would be not be feasible for a new screening process or a harassment investigation to be effectively carried out as witnesses may not be available and memories will not be fresh. As a result, the ERC recommends that the Commissioner apologize to the Grievor for the RCMP's failures to comply with relevant harassment authorities and properly deal with the harassment complaint, as well as for the delay in the harassment complaint process.

G-677 – Relocation The Grievor purchased land near a post to which he would soon be relocated. He decided that he wished to live on the land, in a new home, the construction of which he would oversee as the general contractor. He formally requested a House Hunting Trip (HHT) beginning on the date construction was scheduled to start, but was told that permission could not be given for reasons that seemed unfounded and at odds with earlier advice he received. He took the trip anyway.

A relocation official later sent the Respondent a Business Case in support of the Grievor's trip being approved as an HHT under the RCMP Integrated Relocation Program (IRP) Policy, which in turn would render the Grievor eligible for a reimbursement of certain costs incurred on his trip.

The Business Case suggested the Grievor had needed to book contractors and tradespeople to help him build his home. However, the only evidence in the record that shed any light on what occurred during the trip included notes and an invoice indicating that his land was excavated.

The Respondent rejected the Business Case on the basis that the Grievor was ineligible for an HHT, as he had already secured a permanent accommodation at his new post by the time of his trip, by way of buying his land and obtaining a building permit based on final plans. The Grievor presented a grievance, which was denied on its merits by a Level I Adjudicator. The Grievor then resubmitted his grievance at Level II and it was subsequently referred to the ERC.

ERC Findings: The ERC found that the key question in the grievance was: what did the Grievor do on his trip? Unfortunately, there was little evidence in the record to help answer this question. The ERC signaled a willingness to accept that, when read together, certain sections of the IRP could be construed as permitting a relocating member to take an HHT for the purpose of making inquiries of and/or booking tradespeople to help build a home for which s/he was the contractor.

However, there was no evidence, other than insinuations in a Business Case, that the Grievor used his trip to canvass or book trades. Again, the only evidence in the record illuminating what took place during the Grievor's trip was some notes and an invoice indicating that his land was excavated. That evidence did not show that the Grievor canvassed or booked trades during his trip. At best, it implied that he supervised the breaking of ground on his land. A plain reading of the IRP suggested that this was not an appropriate rationale for an HHT, as it did not involve a measure that was taken to secure a home, or to secure the means necessary to build a home.

The ERC was left with the facts that the Grievor took a trip for which he did not have permission, to perform alleged tasks that were neither clearly defined nor substantiated by evidence. In light of those gaps, it concluded that he had not satisfied his burden of persuasion in establishing that he was entitled to an HHT, or to a reimbursement of HHT-related expenses, under the IRP.

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

G-678 – Time Limits The Grievor was transferred to a new position. Before relocating to the new position, he went on a house hunting trip (HHT) to find somewhere to live at his new place of work. The *Relocation Policy for the Royal Canadian Mounted Police (2009)* provided that the most practical and economical means of transportation be used for the HHT. A Relocation Section advisor authorized the Grievor to use a rental car for this trip. The Grievor believed that using his personal vehicle and being reimbursed for mileage would be less costly. He therefore contacted the advisor and a supervisor at the Relocation Section a few days before his HHT to try to convince them that it was more appropriate for him to use his own vehicle. Having received no response, the Grievor took his HHT using his personal vehicle in June 2012. Upon returning from the HHT in July 2012, the advisor confirmed that only a car rental had been authorized and that the mileage for the use of his personal vehicle during the HHT would therefore not be paid. The Grievor nevertheless claimed, and received payment for, the mileage of his HHT in August 2012. In December 2012, a reviewer from the Relocation Section advised him that he might have to reimburse this amount and told him that she had consulted the policy centre on this matter and was awaiting a response. In January 2013, a Relocation Section advisor informed him definitively that he would have to reimburse the mileage payment he had received since he had not been authorized to use his personal vehicle.

The Grievor filed a grievance challenging the decision to recover this amount. However, the Respondent argued that the Grievor had failed to comply with paragraph 31(2)(a) of the *RCMP Act* which requires that a grievance be filed within 30 days after the day on which the member becomes aware of the decision aggrieving him or her. According to the Respondent, the Grievor had been informed of the approved mode of transportation in the summer of 2012 and should have filed his grievance then. The Level I Adjudicator dismissed the grievance on the ground raised by the Respondent, namely that it had not been filed on time. The Grievor presented his grievance at Level II.

ERC Findings: The ERC found that the grievance was filed at Level I within the 30-day time limit prescribed in paragraph 31(2)(a) of the *RCMP Act.* The grievance did not concern the decision to refuse payment of mileage costs for the HHT, which had been communicated to the Grievor in July 2012; rather, it concerned the subsequent decision, which was definitively communicated to the Grievor in January 2013, to demand reimbursement of the amount allegedly paid to him in error in August 2012. The decision communicated in January 2013 was not a confirmation of the decision communicated to the Grievor in July 2012; rather, it constituted a new decision giving rise to a different prejudice, that of having to reimburse a payment dating back several months. This prejudice differed from the prejudice related to the decision of July 2012 of not being entitled to payment.

ERC Recommendation: The ERC recommends that the grievance be allowed on the grounds that the Level I prescribed time limit was met. The ERC also recommends that the Commissioner of the RCMP ensure that the parties provide their submissions on the merits of the case at Level II directly to her, given the time that has passed in dealing with the Grievor's grievance.

G-679 – Time Limits The Grievor was transferred to a new position. His final relocation trip took place in August 2012. When he arrived at the new position, the Grievor was staying at a residence (the new residence) rented and inhabited by his father. The Grievor continued to occupy the new residence thereafter and stored his furniture and belongings there after they were delivered. He claimed, and on September 8, 2012, received, $100.00 in compensation for the private non-commercial accommodation allowance (PNAA), of $50.00 for two nights, that is, August 8 and 9, 2012. On December 18, 2012, a financial reviewer in the Relocation Section (the Reviewer) advised the Grievor by email that he would have to reimburse the $100.00 PNAA he had been paid. She noted that, according to the *Relocation Policy for the Royal Canadian Mounted Police (2009)* (the *Relocation Policy*), any member who "stays in his/her own residence" cannot claim the PNAA. She stated that the address of the new residence, where the Grievor indicated that he had stayed on August 8 and 9, 2012, was the address he had designated as his new destination address and that it was therefore the address of his "own residence". The Grievor replied to the Reviewer by email on December 20, 2012, providing further details regarding the new residence. He informed her that the address of the new residence was actually his father's, and that when he spent the night at this residence when he arrived at the new position, he stayed there temporarily while he was actively looking for housing. His bed and "effects" could not be delivered to the new residence on the evening of August 9, 2012, and the new residence did not become his "address" until September 10, 2012. The Grievor received no response to this email. On January 23, 2013, a Relocation Section advisor informed the Grievor that he would have to reimburse the amount of the PNAA.

On February 2, 2013, the Grievor filed a grievance challenging the decision communicated on January 23, 2013. The Respondent argued that the grievance had not been filed in accordance with paragraph 31(2)(a) of the *RCMP Act*, which requires that a grievance be filed within 30 days

after the day on which the member becomes aware of the decision aggrieving him or her. According to the Respondent, the Grievor was informed of the obligation to reimburse the PNAA on December 20, 2012, and he had to file his grievance within 30 days of that date. The Level I Adjudicator dismissed the grievance on the ground raised by the Respondent, namely that it had not been filed on time. The Grievor presented his grievance at Level II.

ERC Findings: The ERC found that the grievance was filed at Level I within the 30-day time limit prescribed in paragraph 31(2)(a) of the *RCMP Act*. The information provided to the Reviewer on December 20, 2012, shed a whole new light on the question of whether the Grievor, when he first arrived at the new position, had stayed in his "own residence" according to the terms of the *Relocation Policy*. The Grievor could reasonably expect that the decision of December 18, 2012, would at least be reviewed in the light of these details about his particular situation when he arrived at the new position. However, he received no response to this email. The 30-day time limit required to file the grievance began when the Grievor received the communication of January 23, 2013, confirming that the amount of the PNAA would have to be reimbursed and which in no way indicated that the information he had provided had been considered. The Grievor met this time limit.

ERC Recommendation: The ERC recommends that the grievance be allowed on the grounds that the Level I prescribed time limit was met. The ERC also recommends that the Commissioner of the RCMP ensure that the parties provide their submissions on the merits of the case at Level II directly to her, given the time that has passed in dealing with the Grievor's grievance.

G-680 – Relocation In 2011, the Grievor accepted a transfer and relocated as per the *Integrated Relocation Program Policy for the RCMP 2009* (IRP). Prior to the move, the Grievor and the Respondent discussed the weight limitation for shipping his household goods and effects (HG&E) and the relevant IRP provisions. The Grievor claimed that the mover advised him that the HG&E were likely to be under the weight limitation. The HG&E were shipped and the Grievor was invoiced for the overweight HG&E. He grieved the Respondent's decision to invoice him for the shipping cost of overweight HG&E.

The Level I Adjudicator denied the grievance on the merits. She found that the Grievor had not met his burden to demonstrate that the Respondent's decision to request reimbursement of shipping costs was inconsistent with the IRP and that the Grievor had not discharged the onus of familiarizing himself with the policy and seeking advice on the policy, where necessary.

The Grievor was served the Level I decision when he was Off-Duty Sick. Fourteen days later, he sent an extension request to the Office for the Coordination of Grievances to file his Form 3081. The Grievor submitted his Form 3081 to Level II, 30 days after he was served with the Level I decision. At Level II, the Grievor submitted that given the nature of his circumstances, both the remote location from which he was transferring from and his limited ability to verify the weight of his HG&E, he had taken all the steps required to ensure that his HG&E were within the weight limitation. The matter was then referred to the ERC for review.

ERC Findings: The ERC found that the grievance was not presented within the 14-day limitation period outlined in paragraph 31(2)(b) of the *RCMP Act*. However, the ERC found that the Grievor's circumstances merited a retroactive extension of time by the Commissioner, pursuant to subsection 47.4(1) of the *RCMP Act.*

In respect of the merits of this grievance, the ERC found that the Respondent's decision was consistent with the IRP policy and that the Grievor's circumstances did not meet the requirements of 'exceptional circumstances' as per section 1.03.18 of the IRP as they were not rare and extreme. The ERC found that the Grievor chose to take a risk by relying on the informal advice of the mover rather than exercising due diligence and making follow-up inquiries with the appropriate policy centre in the Force to verify that he was in compliance with the IRP.

ERC Recommendation: The ERC recommends that the Commissioner find that the Grievor has not satisfied the Level II time limitation but recommends that the Commissioner grant a retroactive extension of time pursuant to subsection 47.4(1) of the *RCMP Act* as there are strong grounds for finding that the Grievor's circumstances merited an extension.

The ERC further recommends that the grievance be denied on the merits because the Respondent's decision to invoice the Grievor for overweight HG&E was consistent with the IRP and the Grievor's circumstances did not meet the definition of 'exceptional circumstances' as per the IRP.

Commissioner of the RCMP's Final Decisions

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

Current Legislation Cases:

Conduct Appeals

C-025 – Conduct Authority Decision *(summarized in the April – June 2019* Communiqué*)* The Appellant participated in a deployment to a foreign country. As part of his pre-deployment training, the Appellant signed an agreement pursuant to which he undertook not to engage in sexual or intimate relations with local citizens (local nationals) of that country for the duration of his mission. Near the end of the Appellant's deployment, the Appellant's roommate informed a senior officer of the Canadian contingent that she believed the Appellant was intimately involved with a local national. Upon the Appellant's return to Canada, a *Code of Conduct* investigation took place and the Appellant was found to have failed to respect his pre-deployment agreement and also found to have misled the senior officer by denying any intimate involvement with a local national. The Appellant appealed the Respondent's findings on the allegations. The ERC found that the Force had not established on a balance of probabilities that the Appellant had engaged in an intimate relationship with a local national. The ERC recommended to the Commissioner of the RCMP that she allow the appeal and make the finding that both allegations are not established.

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 sections 3.3 and 8.1 of the RCMP *Code of Conduct*. The Respondent imposed conduct measures comprising a total forfeiture of 64 hours pay, and a reprimand.

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 matter was reviewed by the RCMP External Review Committee. The Chairperson determined that the Respondent's decision disclosed a manifest and determinative error, finding that there was insufficient evidence in the record to establish the allegations. Accordingly, the Chairperson recommended that the appeal be allowed and that the allegations be found as not established.

The Adjudicator concurred with the Chairperson. 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.

The Adjudicator determined that the evidence was insufficient to demonstrate an intimate relationship between the Appellant and a local national, and also found that the evidence was lacking to demonstrate that the Appellant was obligated through any administrative or operational process to divulge his relationship with any non-local national. Therefore, it was found that Allegations 1 and 2 were not established, resulting in the conduct measures being rescinded.

Other Appeals

NC-030 – Medical Discharge *(summarized in the July – September 2019* Communiqué*)* The Appellant was beset by and treated for numerous medical issues over the course of a 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 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 Appellant presented an appeal. The ERC recommended that the appeal be allowed and that the Decision be quashed. It further recommended that the matter be remitted to a new decision-maker.

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

The Appellant was absent from duty from November 19, 2014, until her discharge on July 12, 2017. At the time, she knew the RCMP had on hand health documentation that supported her return to work. In fact, the Appellant's care providers had sent letters to RCMP Health Services indicating the Appellant's health was improving, her return to work imminent, her eventual return to full operational duties anticipated. Notwithstanding, the Respondent proceeded with the discharge process. Once served with the Notice of Intent to Discharge a Member (NOI), the Appellant requested a meeting with the Respondent which was not granted, the Respondent offering no reasons for his decision, as required. The Appellant subsequently submitted a 25-page response to the NOI, in vain, as the Respondent issued the Order to Discharge effective July 12, 2017, but not without first speaking with the HSO without informing the Appellant of the consultation or of the actual information sought and received.

On Appeal, the Appellant argued 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.

The ERC found: "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". The ERC also found the Respondent failed to provide sufficient reasons for his decision as "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".

The ERC recommended that the appeal be allowed, the Decision quashed and the matter remitted to a new decision-maker. The Appeal Adjudicator agreed with the ERC recommendations, quashed the Respondent's decision, allowed the Appeal, reinstated the Appellant's pay and allowances and directed the Commanding Officer for "X" Division be seized with the matter.

NC-031 – Medical Discharge *(summarized in the July – September 2019* Communiqué*)*
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 recommending that the Appellant be discharged for medical reasons. The Appellant requested that the Respondent recuse himself since he had made a previous decision on harassment complaints filed by the Appellant. 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. The ERC recommended that the Adjudicator allow the appeal and remit the file for a new decision.

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

[*Translation*]

A regular member of the RCMP since 1998, the Appellant experienced difficulties in the workplace in 2012. Therefore, in November 2013, she filed harassment complaints against two supervisors, a corporal and a sergeant, and in April 2014 began her medical leave which led to her discharge. The Commanding Officer of "X" Division and Respondent in this appeal dismissed the harassment complaints in December 2015 and January 2016, respectively. Although of the opinion that the events identified by the Appellant did not constitute harassment, he did, however, clarify that the Appellant should no longer report to the corporal or the sergeant.

The Appellant appealed the decision of the Commanding Officer of "X" Division to discharge her from the RCMP on the grounds that she allegedly had a disability as defined in the *Canadian Human Rights Act*. According to her, the impugned decision [*Translation*] "violates the principles of procedural fairness considering that the decision maker refused to recuse himself," it "is based on an error of law in that it contravenes the charters because of the decision maker's misinterpretation of principles well established by the courts with regard to the duty to accommodate," it is "clearly unreasonable because of the misinterpretation of the factual framework, which constitutes a palpable and overriding error of facts which affects the rights of the Appellant" and, finally, "the decision maker contravened the various RCMP processes by not ensuring that reintegration measures were put in place to facilitate the Appellant's return to work."

Pursuant to section 17 of the RCMP Regulations, the appeal was referred to the RCMP External Review Committee (ERC). A careful examination of the file led the ERC Chairperson to the following conclusions:

> *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 documents/information to the Appellant. Moreover, this breach of procedural fairness could not have been remedied by this appeal...*
>
> *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.*

The ERC recommended that the Adjudicator allow the appeal and remit the file to another decision-maker for a new decision, a recommendation that the Adjudicator ratified at the outset.

The appeal is allowed. The case must be taken over by a decision-maker other than the decision-maker who rendered the decision reversed on appeal.

Former Legislation Cases:

Grievances

G-661 – Relocation *(summarized in the July – September 2019* Communiqué*)* The Grievor was transferred from another Division. 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, asked for an extension of the two year time limit. The Respondent denied the extension. The Respondent's reply stated that he 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 Level I Adjudicator denied the grievance on the preliminary issue of compliance with time limits at Level I. The ERC recommended 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.*

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

The Grievor challenged the Respondent's rejection of a request for an extension of the two-year period under the Integrated Relocation Program. During early resolution, the Respondent requested a ruling on timeliness. At Level I, the Adjudicator found that the grievance was not timely. The Commissioner accepts the ERC finding that the grievance was not presented at Level I within the mandatory limitation period set out in paragraph 31(2)(a) of the *RCMP Act*. The grievance is denied.

G-662 – Relocation *(summarized in the July – September 2019* Communiqué*)* 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. The Grievor's home was listed for sale, and an offer on the home that fell through shortly before the deadline. The Grievor eventually sold the home after the deadline had passed. 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 ERC recommended that the grievance be allowed. The ERC further recommended 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.

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

The Grievor challenged the Respondent's rejection of his request to extend the eligibility period for relocation benefits for the sale of his home beyond the two-year limit. The Commissioner accepts the ERC finding that the Respondent failed to convey the Grievor's exceptional circumstances when he communicated with the Treasury Board Secretariat, and agrees that the grievance be allowed.

G-663 – Isolated Posts Directive *(summarized in the July – September 2019* Communiqué*)* 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. The Grievor admittedly did not review relevant authorities to learn his obligations regarding the medical travel, for which pre-approval was not obtained. Later during the pregnancy, in the first documented correspondence between the Grievor and the Employee Management Relations Officer (EMRO), an EMRO official stressed the importance of obtaining pre-approval for medical travel. 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 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 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 ERC recommended that the grievance be denied.

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

The Grievor challenged the Respondent's decision to deny his request for isolated post medical travel expenses incurred as a result of his wife's pregnancy. The Level I Adjudicator denied the grievance. The Commissioner accepts the ERC finding that the Grievor failed to familiarize himself with policy and obtain pre-approval prior to incurring the expenses, even after being told to do so. The grievance is denied.

G-664 – Travel *(summarized in the July – September 2019* Communiqué*)* The Grievor claimed a Private Non-Commercial Accommodation Allowance (PAA) 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 PAA is not intended to compensate members for inadequate accommodations. The ERC found that the Grievor is not entitled to the PAA. The ERC recommended that the grievance be denied, as, at the relevant time, the trailer at issue fell within the National Joint Council Travel Directive definition of "Government and institutional accommodation" as opposed to "private non-commercial accommodation".

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

The Grievor challenged the Respondent's decision to deny his expense claim for the private non-commercial accommodation allowance (PAA). At Level I, the Adjudicator found that the trailer in which the Grievor had stayed constituted government and institutional accommodation (GIA), rather than private non-commercial accommodation. The Commissioner accepts the ERC finding that the Grievor is not entitled to the PAA. The grievance is denied.

G-666 – Medical Discharge *(summarized in the July – September 2019* Communiqué*)* The Respondent served the Grievor with a Notice of Intention to Discharge on the ground of having a disability. 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. 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. 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. The ERC 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. The ERC recommended that the grievance be allowed.

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

The Grievor challenged a decision by the RCMP to medically discharge him. At Level I, the Adjudicator allowed the grievance and quashed the medical discharge on the basis that the Grievor's right to procedural fairness had been breached. The Grievor sought a review at Level II on the issue of his medical profile. The Respondent agreed to revoke the medical profile but the Grievor maintained the Level II grievance. The Commissioner accepts the ERC recommendation that the medical profile issue is moot and that the original medical discharge be quashed, confirming the Level I decision.