Communiqué – April to June 2020

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

The kinds of cases reviewed by the ERC include:

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

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

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

In this issue:

Findings and Recommendations

Between July and September 2020, the RCMP External Review Committee (ERC) issued the following 13 findings and recommendations:

Current Legislation Cases:

Conduct Appeals

C-036 – Conduct Authority Decision Upon completing his activity, the Appellant called the District Operations Communication Centre (OCC) to inquire as to whether there was a traffic operation in the area and was provided with the location of some units. Later that evening a 911 call was placed by a private citizen, concerned that the driver of the Appellant's vehicle was intoxicated as he felt that the vehicle was being driven erratically.

Police attended at the Appellant's residence. While they believed he was displaying signs of intoxication, as there was no admission of consumption and a considerable time had passed since he had arrived home, they decided to conclude their investigation. After police left the Appellant's residence he again called the OCC, this time to seek information about their attendance.

As the following day was a holiday, the Appellant returned to the office on the next business day. Shortly after his arrival, the Appellant's supervisor asked to speak to the Appellant about the incidents following his activity. During their meeting the Appellant told his supervisor that he had nothing to drink at the activity.

A *Code of Conduct* investigation was initiated alleging five contraventions of the *Code of Conduct*.

Following a conduct meeting, the Respondent issued a written decision wherein he concluded that the Appellant had made inappropriate inquiries of the OCC, provided inaccurate information to a supervisor and failed to report being investigated to a supervisor, contrary to sections 3.2, 8.1 and 8.2 of the *Code of Conduct*, respectively. The other two allegations were found to be unestablished on a balance of probabilities.

The Respondent determined that the Appellant made inappropriate inquiries of the OCC largely for self-serving reasons pertaining to whether he could have a drink before driving. The Respondent also determined that the Appellant provided inaccurate information to his supervisor by telling her during their meeting that he had nothing to drink at the activity, which the Appellant later admitted was untrue. The Respondent further found that the Appellant should have contacted his supervisor before she requested to meet with him to inform her that he was under investigation after members attended at his residence.

The Respondent imposed conduct measures which consisted of the forfeiture of 20 hours of pay, 20 hours of annual leave, a reassignment to another position not involving a relocation or demotion, a reprimand and the requirement to apologize OCC personnel in writing. The Appellant tendered an appeal, followed by a very lengthy submission in which he expressed numerous opinions and made a wide range of arguments.

ERC Findings: The ERC made findings in relation to multiple arguments advanced by the

Appellant for varying reasons reflective of applicable jurisprudence, but two arguments in particular generated the most attention. First, in his decision, the Respondent indicated that the Appellant had to inform his supervisor "immediately" that he was under investigation, while the language in section 8.2 of the *Code of Conduct* states that notice is to be provided "as soon as feasible". Second, the Appellant alleged that the decision was clearly unreasonable because no statement was taken from the Appellant's supervisor with respect to two of the Allegations deemed established. The ERC found that despite the Respondent's use of the word "immediately" instead of "as soon as feasible", it is clear from his reasoning that he was not concerned by the lack of the immediacy with which the Appellant notified his supervisor that he was under investigation, but rather by the fact that the Appellant did not do so at any point within the 35 hours between when the police left his residence and his supervisor confronted him about the incident, despite having had the means to do so. With respect to the omission to take a statement from the Appellant's supervisor, the ERC found that while this omission was a serious investigational oversight, the error was not determinative to the decision since the Appellant acknowledged the underlying facts that led to the findings on the allegations in question.

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

C-037 – Conduct Board Decision In June 2012, [Y], a civilian, met [X] at his financial institution where [Y] wanted to withdraw funds to pay his legal fees regarding a criminal charge. As a former RCMP officer, [X] told [Y] that he might be able to help and asked [Y] to bring him all his paperwork regarding his criminal charge from the RCMP. Accordingly, the next day, [X] reviewed the paperwork provided by [Y] and told him that it would cost him $5,000 to "make it go away". [Y] negotiated the price to $3,500 which would be paid in three instalments.

On or about June 28, 2012, [X] called the Respondent, his friend and former troop mate, who was on duty that day and asked whether he could meet with [Y]. [X] had indicated that he had a friend who was arrested and was willing to pay to make the charges go away. When they arrived, [X] sat in the passenger seat of the Respondent's police vehicle. [X] asked the Respondent to "run the guy and see if we can get some money". The Respondent queried [Y] in CPIC and PRIME on his mobile workstation. The Respondent told [X] that there was nothing he could do and further told [Y], who had come up to the police vehicle, to hire a lawyer for the impaired driving charges. On an undisclosed date afterwards, the Respondent texted [X] asking "what's up with the money?".

In March 2013, [X] met with [Y] and told him that the police would be arresting him any day now as they had evidence that he was not respecting his court-imposed conditions. [X] demanded $7,000 from [Y] so that he wouldn't be arrested. [Y] informed the RCMP of the situation, which prompted a criminal investigation against [X] by the RCMP's anti-corruption unit (ACU). During the investigation, the investigators learned that the Respondent had played a part in [X]'s plan to obtain money from [Y]. The Respondent's superior was informed of the Respondent's possible involvement, but delayed a *Code of Conduct* investigation until the ACU investigation was completed. On November 15, 2014, [X] was arrested for fraud, extortion and personating a police officer. Later that day, the Respondent was arrested for fraud and breach of trust. Upon his arrest, the Respondent admitted making the queries regarding [Y] on his mobile workstation, but denied receiving money for doing so, nor knowing that [Y] had already paid [X] when the Respondent got involved.

The Respondent faced three allegations in relation to his accessing police databases and misusing a patrol car for reasons that were unrelated to his duties. A *Code of Conduct* process was initiated and the Appellant sought the Respondent's dismissal. The Respondent admitted all

three of the allegations and the Conduct Board found each of those allegations to be established. However, after a one-day hearing regarding the conduct measures, the Conduct Board did not order the Respondent's dismissal. Instead, the Conduct Board imposed a reprimand and a forfeiture of five days' pay and five days' annual leave for each allegation respectively.

The Appellant appealed the conduct measures imposed, requesting that the Respondent be dismissed. The Appellant raised three grounds of appeal, namely: 1) the Conduct Board failed to examine the egregious nature of the misconduct; 2) the Conduct Board contradicted itself regarding findings of the Respondent's knowledge of [X]'s plan to obtain money and 3) the Conduct Board failed to apply the reasonable person test in finding that the Respondent should not be dismissed.

ERC Findings: The ERC first found that the Conduct Board clearly considered the egregious nature of the misconduct and indicated that it was indeed serious misconduct. However, the Conduct Board emphasized that it was limiting its findings to the allegations described in the Notice of Hearing. The Conduct Board explained that no other misconduct was alleged and no evidence of other misconduct was offered. The ERC found that it is not sufficient for a party to simply disagree with the weight afforded to evidence. The party must demonstrate that the Conduct Board made a manifest and determinative error in its assessment of the evidence.

The ERC further found that the Conduct Board did not contradict itself because the Conduct Board first made a finding that the Respondent knew that [X] wanted to obtain money from [Y]; however, the Conduct Board later found that the Respondent did not know what [X] was planning to do exactly with the CPIC information. No evidence was presented to the Conduct Board to the contrary. In the ERC's view, the two findings were not irreconcilable.

Lastly, the ERC found that the reasonable person test raised by the Appellant is the test to establish an allegation of disgraceful conduct. It is not the proper test to determine an appropriate conduct measure. The ERC found that the Conduct Board applied the correct legal test and assessed the appropriate conduct measure.

ERC Recommendation: The ERC recommends that the Commissioner dismiss the appeal and confirm the conduct measures imposed by the Conduct Board.

Other Appeals

NC-053 – Medical Discharge The Appellant has been an RCMP member since May 20, 2003. She was on sick leave almost continuously from October 2013 to August 2018. On August 20, 2018, she was sent a letter to advise her that she was being medically discharged due to a disability. On August 23, 2018, the Appellant refused to accept the letter she was sent by registered mail with signature requested. On December 4, 2018, a Notice of Intent to Discharge (Notice) was served on the Appellant by registered mail with no signature requested. The Appellant did not respond to the Notice. On December 27, 2018, an Order to Discharge (Order) ending her employment with the RCMP, dated the same day, was served on the Appellant by registered mail with no signature requested.

On February 1, 2019, the Appellant submitted an appeal form to the Office for the Coordination of Grievances and Appeals. On May 13, 2019, the Respondent raised the issue of the appeal period. In his opinion, the Appellant had not complied with the statutory 14-day time limit imposed by the *Commissioner's Standing Orders (Grievances and Appeals)*, and the appeal therefore had to be dismissed on that basis. The Appellant submitted that she had never read

the Order because when the document had been sent to her, she had stopped acknowledging receiving mail from the RCMP. In that regard, she maintained that her attending physician had notified the RCMP several times that sending letters, notices or other documents compromised her physical integrity, and she was therefore unable to read the documents. The Appellant indicated that she accidentally discovered on January 27, 2019 that she was no longer a member of the RCMP when she noticed that she had not received her pay for the month of January. In her opinion, she therefore had 14 days from January 27, 2019 to lodge her appeal.

ERC Findings: The evidence on file shows that the Order was served on the Appellant on January 4, 2019. However, since it was served by registered mail with no signature requested, the Appellant is deemed, pursuant to subsection 15(6) of the *RCMP Regulations, 2014*, to have been served the Order seven days later, on January 11. She therefore had 14 days from that date, until January 25, 2019, to lodge her appeal. As a result, by submitting her appeal form on February 1, 2019, she did not comply with the statutory 14-day time limit set out in section 38 of the *Commissioner's Standing Orders (Grievances and Appeals)*. The ERC also concluded that there were no exceptional circumstances in this case to justify extending the time limit to lodge an appeal.

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

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

[*Translation*]

The Appellant has been a member of the RCMP since 2003. She was on medical leave almost continuously from October 2013 to August 2018, and she attempted to gradually return to work three times without success. On August 20, 2018, a letter was sent to the Appellant by registered mail with signature requested to advise her that she was being medically discharged due to disability. The Appellant refused to accept this letter. On December 4, 2018, a Notice of Intent was served on the Appellant by registered mail with no signature requested, and she did not provide any response. Then, on December 27, 2018, an Order to Discharge was served on the Appellant by registered mail with no signature requested, ending her employment with the RCMP. On February 1, 2019, the Appellant appealed this decision. On May 13, 2019, the Respondent raised the preliminary issue of the statutory time limit and indicated that the Appellant had failed to comply meeting the 14-day appeal period imposed by the *Commissioner's Standing Orders (Grievances and Appeals)*. In response to this preliminary issue, the Appellant stated that she had only read the decision on January 27, 2019, and that she therefore had 14 days from that date to lodge her appeal.

The matter was referred to the ERC for an in-depth review pursuant to subparagraph 17(d)(i) of the *Royal Canadian Mounted Police Regulations, 1988*, SOR/2014-281. The Chairperson of the ERC recommended that the appeal be dismissed on the basis that since the letter had been served by registered mail with no signature requested, the Appellant was deemed, pursuant to subsection 15(6) of the *RCMP Regulations*, to have been served seven days later, on January 11, 2019. In the opinion of the ERC, the Appellant therefore had until January 25, 2019, to file her appeal. Consequently, the ERC found that by filing her appeal on February 1, 2019, the Appellant failed to comply with the statutory 14-day time limit. The ERC also found that there were no exceptional circumstances in this case to justify extending the appeal period.

Along with the ERC, the Adjudicator agreed that the Appellant had filed her appeal after the

statutory time limit, but found that, given the provisions of paragraph 43(d) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the particular details of this appeal justified extending the time limit. The Adjudicator therefore reviewed both grounds of appeal raised by the Appellant relating to the Respondent's duty to accommodate and the latter's reasonable apprehension of bias. The Adjudicator dismissed the appeal on the merits.

Former Legislation Cases:

Grievances

G-688 – Relocation In 2007, the Grievor was issued a transfer form (A-22A) from one place of duty to another in the same province. He started commuting to the new post March 11, 2008. Pursuant to the Integrated Relocation Program (IRP), the Grievor could elect not to sell his home at his old place of duty, and receive an "incentive not to sell" (INTS). The INTS is a transfer of 80% to the "personalized envelope" of the estimated real estate commission fees that would have been payable had the home been sold, based on appraisal value. Under the IRP, the Grievor had to decide within 10 days of receiving his appraisal whether to request the INTS.

The appraisal of the Grievor's home at his old place of duty took place in January 2008. The Grievor undertook multiple house hunting trips (HHT) to find a suitable replacement residence at his new place of duty. However, his search was unsuccessful. Therefore, the Grievor's request to delay the sale of his home on February 11, 2008, was approved by the Departmental National Coordinator. The Grievor did not, however, request the INTS within 10 days of obtaining the appraisal for his home at his old place of duty. He started commuting to the new post March 11, 2008.

On February 5, 2010, over two years after the appraisal of his home at his old place of duty, the Grievor, who was approaching retirement and would be retiring at his old place of duty, requested the INTS. The Respondent denied the request on February 18, 2010. The Grievor grieved the matter on March 8, 2010.

The Level I Adjudicator found that the Respondent's denial of the Grievor's request was consistent with applicable IRP provisions, which contained a mandatory 10-day period to request the INTS.

ERC Findings: The ERC found that, by using the word "must", the section in the IRP providing for the INTS was a mandatory provision. The Grievor had 10 days after the appraisal of his principal residence to request the INTS, which he failed to do. The ERC further found that the Grievor's responsibility to be knowledgeable about policy renders irrelevant his assertion that the applicable deadline for the INTS request was not impressed upon him.

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 Departmental National Coordinator (DNC), Travel and Relocation, to deny his claim for an incentive not to sell (INTS) his residence during a relocation process. At Level I, the Adjudicator denied the grievance, finding that the Grievor's request was not submitted within 10 business days of receiving a real estate appraisal. The Grievor sought a

review at Level II. The ERC recommended that the grievance be denied on the basis that the approval of the INTS benefit was time-barred under the IRP, the Grievor was expected to know or familiarize himself with relevant policies applicable to his situation, and his arguments based on fairness and flexibility were not persuasive. The Commissioner agrees, finding that the Grievor's request was not timely, section 7.03.2 is mandatory, and no discretion is authorized under this section. Had the request complied with the requirements set out in policy, he would have been entitled to the INTS benefit. The grievance is denied.

G-689 – Harassment The Grievor received late-night texts from a phone belonging to a male colleague whom she did not know well (Alleged Harasser). The texts invited her to an out-of-town party he was attending, but one of them was inappropriate. The Alleged Harasser soon apologized to the Grievor in writing, but insisted that somebody else – possibly another RCMP member at the party – had jokingly used his phone to send her various texts, including the inappropriate text. Subsequent texts implied that the parties mended fences. However, the record also suggested that the Alleged Harasser may have admitted to sending the inappropriate text. It further suggested that the Alleged Harasser made an in-person apology to the Grievor that she found insincere in light of a rude nickname she believed he and other male peers had given her.

The Grievor lodged a Harassment Complaint (Complaint). The Alleged Harasser filed a written reply to which he attached all of the text messages between the two parties. It is clear from the record that a Human Resources Officer screened-in the Complaint and deduced that any further investigation was unnecessary because the alleged harassment was confined to text messages. The Human Resources Officer then prepared a draft decision for the Respondent's completion. The Respondent found that the Complaint was "unsubstantiated". He reasoned that the Alleged Harasser had apologized to the Grievor, that the Grievor accepted the apology, that a lack of sincerity was not harassment and that the case involved an isolated incident which was resolved by the parties. The Grievor filed a Level I grievance which was denied on the merits. She resubmitted the grievance at Level II.

ERC Findings: After disposing of various undisputed preliminary and ancillary issues, the ERC found that the Respondent had decided the Complaint in a manner inconsistent with Treasury Board and RCMP harassment authorities, as well as with associated ERC and Commissioner jurisprudence. Specifically, even if the alleged harassment was limited to the handful of cursory written materials submitted by the parties, the Grievor was nevertheless entitled, as a matter of basic fairness, to be interviewed and to respond to the Alleged Harasser's written reply to her Complaint. It was troubling that no investigation took place in these circumstances, however, as it was evident that what transpired was serious, contentious, multifaceted and not exclusively confined to writing. Although some of the evidence raised questions regarding the nature of what had really happened between the Grievor and the Alleged Harasser, those questions should have been dealt with as part of a broader inquiry into the matter, and not used as rationales for dismissing the Complaint in the absence of more complete information.

ERC Recommendation: The ERC recommended that the Commissioner: allow the grievance; apologize to the Grievor for the fact that the Complaint was not decided in compliance with the applicable harassment authorities and jurisprudence; acknowledge that the Respondent did not possess sufficient information to make a final decision; and quash the Respondent's decision that the Complaint was unsubstantiated. Lastly, recognizing the Commissioner's strong support for modernized harassment resolution processes, the ERC recommended that the Commissioner discuss the outcome of this matter with stakeholders if she believes it offers any broader lessons that might help further strengthen the RCMP's present harassment processes.

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

The Grievor challenged a decision by the Commanding Officer of "X" Division, finding that her harassment complaint was unsubstantiated in the absence of an investigation. At Level I, the Adjudicator denied the grievance on the basis that the Grievor was afforded procedural fairness in the handling of her harassment complaint. The Level I Adjudicator found that a formal investigation had not been necessary, nor was it necessary for the Grievor to have had an opportunity to rebut the alleged harasser's statement. The Grievor sought a review at Level II. The ERC recommended that the grievance be allowed on the basis that the Respondent relied on incomplete information in rendering his decision. The ERC also found that the complaint was not afforded basic fairness, as the Grievor was not interviewed or given any opportunity to respond to the alleged harasser's information. The Commissioner agrees with the ERC analysis and findings. The grievance is allowed.

G-690 – Harassment In October 2005, a subordinate filed a harassment complaint against the Grievor. Several allegations were made, including one allegation of sexual harassment and several allegations of alleged harassment in the workplace. The Grievor was informed of the complaint and provided a written statement, but was not apprised of the entirety of the allegations. The Respondent then mandated a harassment investigation. The Grievor was, at this time, still not apprised of the allegations. In October 2006, he provided an oral statement with respect to the harassment investigation. The Grievor did not receive a preliminary investigation report nor was he offered an opportunity to comment on this report or other witnesses' statements.

In February 2007, the Human Resources Officer (HRO) provided the Respondent with the materials from the harassment investigation. On February 18, 2007, the Respondent found that the Grievor's actions constituted harassment. The Respondent, who was also the Appropriate Officer, ordered a *Code of Conduct* investigation and initiated a disciplinary hearing into the Grievor's actions.

Within the disciplinary process, the Grievor received disclosure of the harassment investigation report and noticed new allegations, inconsistencies between the Respondent's rationale and the evidence gathered, and that the Respondent's finding of harassment was unsupported by the evidence.

The Grievor grieved the Respondent's decision. He stated that the decision was reached in a procedurally unfair manner on the basis that he had not been apprised of all the allegations and was not afforded the opportunity to be heard. He further alleged that the Respondent had no authority to initiate a disciplinary hearing since the one year time limit had expired (the Adjudication Board did in fact dismiss the *Code of Conduct* contravention as the time limit had in fact expired). The Grievor also argued that the decision was unsupported by the evidence.

The Respondent, during the Early Resolution (ER) phase, ordered a third-party review of the initial investigation and decision. He later admitted during ER and the Disciplinary Hearing that the harassment investigation was flawed, the Grievor's procedural rights had been breached, the investigation report was misleading, that he did not compare the draft decision to the evidence, and that the evidence did not support his conclusions. The third-party review also revealed that the workplace harassment allegations were unfounded.

Taking into consideration these admissions, the Level I Adjudicator found that the Grievor's right to procedural fairness was breached at the investigation stage and that the evidence did not support the Respondent's decision. Given the passage of time, the Level I Adjudicator directed the Respondent to apologize to the Grievor. However, the Level I Adjudicator denied the grievance on the basis that the Grievor was not prejudiced.

ERC Findings: The ERC found that, as the Grievor was not given the opportunity to be heard on all allegations of harassment, his right to procedural fairness was breached. Although in exceptional cases, the decision will remain valid notwithstanding the breach of procedural fairness if the merits of the application or the motion would otherwise be "hopeless", the ERC found that this was not one of those rare cases. It found that the decision was *ultra vires*. The ERC lastly found that the Grievor was prejudiced as one's right to a fair hearing is an unqualified, independent right and a breach of such a right will cause prejudice.

ERC Recommendation: The ERC recommends that the Commissioner allow the grievance. However, given the passage of time, it would be impracticable that a new investigation be ordered. The ERC recommends that the Commissioner apologize to the Grievor.

G-691 – Relocation In February 2010, while posted in province A, the Grievor accepted a six-month leave without pay (LWOP) while his partner received an internship in province B. His partner moved half of their household goods and effects (HG&E) to province B. They planned to return to province A in August 2010. On July 7, 2010, the Grievor was advised that he had been posted to a surplus position at "X" Division Headquarters in province A with a start date in early September 2010. Sometime before August 23, 2010, the Grievor arranged a rental vehicle to move the couple's HG&E from province B to province A. On August 3, 2010, the Griever learned that the surplus position in province A had been cancelled.

On August 16, 2010, a Director in province C contacted the Grievor to inquire if he was interested in interviewing for a position in province C. The Grievor agreed and interviewed for the position on August 24, 2010 by phone from province B. The Grievor obtained the position and spent August 29, 2010 packing, and departed for province C on August 30, 2010 in a rental vehicle, towing his personal vehicle. The Grievor had modified his rental vehicle reservation from province B to province C after he had accepted the position in province C. He arrived in province C in early September 2010. A Transfer Notice (A-22A) was issued on September 7, 2010. The Grievor questioned his new Director regarding the reimbursement of his relocation costs upon starting in his new position; he received only general advice to keep his receipts.

On October 28, 2010, the Relocation Reviewer submitted a business case on the Grievor's behalf to the Respondent seeking reimbursement for his relocation expenses. The Respondent denied the Grievor's request for reimbursement of relocation expenses prior to the issuance of the A-22A. He also denied the Grievor's request to be reimbursed for relocation expenses related to the shipment of his HG&E from province A and his airfare because the arrangements were not made through the Government contracted travel services. The Grievor grieved this decision.

Upon entering the Early Resolution phase, the Respondent indicated that he did not have the authority to approve the relocation expenses, but submitted a business case to the Treasury Board Secretariat (TBS). The TBS denied the rental vehicle expenses, but allowed some of the remaining relocation expenses. The Grievor removed some expenses from his request for reimbursement; therefore, the remaining issue was the rental vehicle expenses.

The Level I Adjudicator denied the grievance. He found that reimbursement for the Grievor's relocation expenses incurred before the issuance of the A-22A; therefore, the Respondent's denial was consistent with the IRP and supported by TBS.

ERC Findings: The ERC found that the IRP did not allow for the reimbursement of the Grievor's rental vehicle expenses. The IRP indicates that the moving of the HG&E must be made through the Household Goods Removal Services contract and by the Relocation Reviewer. It did not allow for the Grievor to make his own arrangements with another service. However, the ERC found that the Grievor's circumstances were exceptional because he had just returned from a deployment when he learned that his posting was cancelled and a new posting was offered just a few days before he had to vacate his apartment. The ERC further found that the moving of the Grievor's HG&E was within the intent of the IRP and further found that the Respondent could have approved the expenses in these exceptional circumstances.

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

G-692 – Harassment In December 2005, the Grievor submitted a harassment complaint against six of his supervisors (Alleged Harassers) based on events that occurred in 2005. The harassment complaint included allegations that the dates on the Grievor's Performance Evaluation and Review Report (PERR) were changed by one of the Alleged Harassers so that a positive assessment would not need to be included, leaving the PERR in a common area, denial of a promotional opportunity, and denial of overtime pay.

In August 2006, the Responsible Officer issued a decision rejecting the complaint on the basis that the allegations of harassment and abuse of authority were unfounded. The Grievor grieved the investigation of the harassment complaint, arguing that his request for materials was not met. He identified the Harassment Advisor as the Respondent and he alleged that none of the witnesses, the names of which were submitted by the Grievor, were interviewed.

The Level I Adjudicator allowed the grievance on the ground that the Respondent had acted in a manner that was inconsistent with the *RCMP Harassment Policy* that existed at the time (Administrative Manual entitled "Prevention and Resolution of Harassment in the Workplace" (AM XII.17)). The Respondent did not provide the witness names to the Human Resources Officer (HRO) and thus failed to adhere to AM XII.17.H.5., which requires that the Harassment Prevention Coordinator provide information and support to all levels of management and employees concerning matters related to the *RCMP Harassment Policy*. The Adjudicator concluded that the only possible remedy was to send the matter back to the current Respondent to put forward the information that ought to have been put to the HRO and seek direction from the current HRO on the matter.

At Level II, the Grievor disagreed with the Adjudicator's reasons for denying the following requested remedies: apologies from the Alleged Harassers, a *Code of Conduct* investigation of the Alleged Harassers, joining together of the current grievance with seven other matters initiated by the Grievor, and a promotion for the Grievor. The matter was referred to the ERC for review.

ERC Findings: The ERC found that the harassment complaint had been screened in but the HRO and Responsible Officer decided not to investigate. The Respondent failed to adhere to the *RCMP Harassment Policy* because he did not provide the HRO with certain information, including the list of the witness names. The actions of the Respondent unfortunately contributed to a decision by the HRO and the Responsible Officer not to investigate the complaint.

ERC Recommendation: The ERC recommends that the Commissioner allow the grievance on the ground that the Respondent did not process the complaint in a way that was consistent with the relevant harassment authorities. Given that a significant amount of time has passed since the events in question took place (2005), the Adjudicator's proposed remedy is not feasible. Given the passage of time, it is unlikely for a new screening process or a harassment investigation to be effectively carried out. 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.

G-693 – Time Limits This grievance concerned expenses related to an overweight move of Household Goods and Effects (HG&E) from one isolated post to another isolated post in 2012. The Relocation Advisor informed the Grievor of an overweight issue regarding his HG&E on July 16, 2012. However, on July 21, 2012, while packing his HG&E, the moving company informed him there was no weight issue and the Grievor therefore proceeded with the move without removing items from his HG&E.

On October 5, 2012, the Grievor received an invoice for the overweight move of his HG&E. On the same day, he contacted his Relocation Advisor who told him that she would look into the matter and get back to him. On February 6, 2013, the Relocation Advisor informed the Grievor that his HG&E were in fact overweight as they were weighed on a scale while in transit. The same day, the Grievor filed his grievance contesting that he reimburse the overweight expenses.

The Respondent raised the issue of timeliness, arguing that Grievor knew of the overweight issue on July 16, 2012 and did not respect the 30-day time limitation set forth in section 31(2)(a) of the *RCMP Act*. After inviting the parties to provide submissions, the Level I Adjudicator agreed with the Respondent and denied the grievance for being time-barred.

ERC Findings: The ERC found that the Grievor was not aggrieved on July 16, 2012 because he could act upon the information to remove items from his HG&E. The ERC further found that the Grievor was made aware of the overweight issue on October 5, 2012. However, as the Relocation Advisor told that the Grievor that she would look into the matter and get back to him, it created an expectation that a new decision would be forthcoming. The ERC lastly found that the Grievor became aggrieved on February 6, 2013 when the Relocation Advisor informed him that his HG&E were weighed and were indeed overweight.

ERC Recommendation: The ERC recommends that the Commissioner allow the grievance on the issue of timeliness and invite the parties to make submissions on the merits of the grievance.

G-694 – Harassment The Grievor presented a harassment complaint (Complaint) against his supervisor (Alleged Harasser) which contained various allegations. According to the Complaint, the Alleged Harasser had, during a first meeting, referred to the Grievor using a derogatory term and shouted at him in an aggressive manner, requiring a third party, Witness A, to intervene. The Complaint also took issue with the manner in which the Alleged Harasser had discussed a work-related issue involving the Grievor with others in the Grievor's absence. In addition, the Complaint alleged that the Alleged Harasser had discussed with another third party, Witness B, the fact that a Conduct investigation had been ordered against the Grievor, causing Witness B to feel "extremely uncomfortable". The Complaint further asserted that the Grievor had been subjected to "sarcasm and unprofessional responses", in text messages from the Alleged Harasser.

A Human Resources Officer (HRO) screened-in the Complaint and approached Witness A with respect to what had occurred during the first meeting. Witness A did not wish to provide a statement, but he indicated to the HRO that while "both parties were in conflict" the Alleged Harasser's actions during the first meeting "did not constitute harassment". The Complaint was forwarded to the Alleged Harasser who provided a response to the Complaint. The HRO then determined there was sufficient information in relation to the Complaint, that no investigation was required, and that the matter could be forwarded to the Respondent for a decision. The Respondent determined that the Complaint was unfounded. The Grievor filed a Level I grievance which was denied on the merits. He resubmitted the grievance at Level II.

ERC Findings: The ERC found that the Respondent had decided the Complaint in a manner inconsistent with Treasury Board and RCMP harassment authorities. The Grievor was not interviewed or given the chance to explain in more detail the allegations in his Complaint, and the Alleged Harasser's detailed response was considered by the Respondent without the Grievor having an opportunity to address it. These omissions resulted in an unfair process, and the decision to proceed directly to a final decision without investigation was based upon incomplete information. The ERC also disagreed with the assessment that an investigation was not necessary in the matter. An investigation could have enhanced the Respondent's ability to determine whether harassment had taken place, as it could potentially have obtained the version of events of Witnesses A and B and, in the case of Witness A, properly documented his reluctance to furnish a statement. Further, an investigation could have assessed whether electronic messages existed and could be retrieved for the Respondent's review, to better understand the allegation of sarcastic and unprofessional exchanges.

ERC Recommendation: The ERC recommends that the Commissioner: allow the grievance; apologize to the Grievor for the fact that the Complaint was not decided in accordance with the applicable harassment authorities and jurisprudence; acknowledge that the Respondent did not possess sufficient information to make a final decision; and quash the Respondent's decision that the Complaint was unfounded.

G-695 – Standing The Grievor presented a harassment complaint (Complaint) against his supervisor (Alleged Harasser) which contained various allegations. Following receipt of the Complaint, the Respondent, in his capacity as Human Resources Officer, obtained a response to the Complaint from the Alleged Harasser. The Respondent also spoke briefly to a potential witness. The Respondent determined that there was sufficient information in relation to the Complaint, that no investigation was required, and that the matter could be forwarded to the Responsible Officer for a decision in relation to the Complaint. The Respondent provided a recommendation to the Responsible Officer to that effect. The Responsible Officer issued a decision confirming that after reviewing the allegations and the response provided by the Alleged Harasser, there was no need for a further investigation. The Responsible Officer concluded that each of the allegations were unfounded.

The Grievor filed a grievance against the Respondent's handling of his Complaint. He also lodged a separate grievance against the Responsible Officer's final decision regarding the Complaint (Related Grievance). An Adjudicator denied the grievance on the ground that the Grievor did not have standing. In the Adjudicator's view, the grievance raised the same issues which were present in the Related Grievance against the Responsible Officer's final and determinative decision. The Grievor submitted his grievance to Level II.

ERC Findings: The key issue to be addressed in this matter was that of the Grievor's standing. Subsection 31(1) of the *RCMP Act* sets out the various standing criteria to present a grievance,

one of which is that a member be aggrieved by a decision, act or omission “in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner’s standing orders”. The ERC found that the Grievor did not have standing as the issues identified in the grievance were concurrently raised in the Related Grievance and addressed in ERC Findings and Recommendations 2400-16-006 (G-694), which examines the actions of both the Responsible Officer and the Respondent in relation to the Complaint. The Related Grievance thus engaged another process for redress to address the subject-matter of this grievance. The ERC observed that a review of the Responsible Officer’s final decision regarding the Complaint, through the Related Grievance, allowed for a comprehensive assessment of the entire process which led to the Responsible Officer’s decision, including the manner in which the Respondent had carried out his role.

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

G-696 – Stoppage of Pay and Allowances The Grievor grieved a decision by the Force ordering the stoppage of his pay and allowances (SPA). The Respondent ordered the SPA as a result of *Code of Conduct* allegations pertaining to the misuse of credit cards that the Grievor was authorized to use to perform his duties. The Respondent found that the criteria to impose a SPA were met. More particularly, he opined that the personal benefit acquired by the Grievor at public expense represented a fraud, theft, conversion and/or a breach of trust. The Respondent emphasized that the misuse of one particular card risked compromising the identity and the activities of the Grievor’s operational program. This was a “significant element” contributing to the “outrageousness” of the alleged misconduct. Statutory charges were also approved against the Grievor for two counts of fraud under $5,000 which were proceeding by indictment. However, the Respondent indicated that the statutory charges were not used as justification for making the SPA Order.

The Grievor argued that, contrary to policy, the Recommendation to SPA contained additional information that was not contained in the Notice of Intent to Recommend a SPA. He further contended that, although his Member Representative (MR) had addressed the issue, he was not given an opportunity to personally address the new information. The Grievor argued that RCMP policy provides that a SPA will not apply to summary convictions or minor *Criminal Code* offences and that the charges he faced typically proceed by summary conviction. Lastly, the Grievor observed that other members have committed far more serious offences but have not been subjected to a SPA. He maintained that his SPA was punitive and only proceeded because of a vindictive Officer In Charge.

ERC Findings: The ERC indicated that the Grievor was owed a high degree of procedural fairness in the SPA process, including the right to know the case against him and to have a meaningful opportunity to respond. The ERC found that the Grievor had had a meaningful opportunity to respond to the new information through his MR. The ERC noted that the Grievor had made no allegation that his MR had erred in any way. The ERC further found that because the Crown had elected to proceed by indictment, the RCMP policy provision which indicates that a SPA will not apply to a summary conviction, was not applicable in the circumstances. Regarding the Grievor’s assertion that the SPA was punitive, the ERC found this to be an unsubstantiated, bald assertion. The ERC observed that a SPA is not a sanction, but rather is a preventive measure designed to protect the RCMP's integrity and its processes pending the outcome of the matter which gave rise to the measure, and that there was insufficient evidence to find otherwise. The ERC pointed out that each case will be dealt with on its own merits, and observed that the cases submitted by the Grievor were disciplinary cases where the applicable legal test was not the same as for a SPA. The ERC found that the Respondent had applied the

correct test, reviewed the appropriate policy and had not erred in applying the required criteria for a SPA.

ERC Recommendation: The ERC recommends that the Commissioner deny the grievance and confirm the Respondent's SPA decision.

G-697 – Medical Discharge The Grievor, who suffered from a disability, has been off-duty sick since July 2004. At first, the Grievor's treating doctors and RCMP Health Services were in disagreement with respect to the Grievor's ability to return to work. Given Health Services' determination that the Grievor was fit for duty without any restrictions, the latter was served with three Return to Work Orders between November 2004 and September 2005. The first two reintegration attempts were unsuccessful because the Grievor failed to report to duty as ordered. In June 2005, the Grievor was presented with a modified work schedule which was endorsed by his treating physician who confirmed that the Grievor would be returning to work in an administrative capacity. The Grievor's Gradual Return to Work began on August 17, 2005, and continued for two weeks until a medical certificate indicating that the Grievor was unfit for duty was submitted. The Grievor's medical leave request was not supported by Health Services and the Grievor was consequently served with a third Return to Work Order on September 8, 2005. In failing to comply with the order, the Grievor was alleged to have been absent from duty without authorization. Disciplinary proceedings were commenced but were eventually dismissed following a review of the Grievor's medical file in June 2007 by the Director of Occupational Health Services. Essentially, the Director concluded that Health Services should have supported ongoing sick leave and consequently, the Grievor should never have been ordered to return to work. As a result of the Director's findings, the disciplinary proceedings against the Grievor were withdrawn and his suspension was lifted.

Between July and November 2007, the Force made significant efforts to meet with the Grievor in order to discuss the options available to him. As a result of his unwillingness to cooperate, the Grievor was served with a Notice of Intent to Discharge on November 27, 2007.

Between April and November 2008, a Medical Board was assigned to determine the degree of the Grievor's disability. The Grievor remained on sick leave for an additional 3.5 years. In March 2011, the Medical Board issued its findings which ultimately led the RCMP to assign a permanent medical profile of G6 O6 to the Grievor. Between July and October 2011, the Force attempted without success to meet with the Grievor in order to ascertain how to proceed.

On September 9, 2011, the Grievor submitted a medical certificate attesting that he was fit for police work as of July 5 of that year. He also conveyed an interest to return to work. However, the following week or so, the RCMP received another medical certificate this time indicating that the Grievor was unfit for duty as of September 16 and for an indeterminate period of time. Nevertheless, in an effort to entertain the Grievor's expressed desire to be reintegrated into the workplace, the RCMP invited him to present an updated Evaluation of Disability Questionnaire (form 4056). When the Grievor failed to provide the requested information, all accommodation efforts ceased and a Notice of Discharge dated November 7, 2011, was issued.

ERC Findings: The ERC found that the Grievor's medical discharge from the RCMP was justified. The ERC held that Force properly relied on the Grievor's lack of participation in the accommodation process, as well as on the medical evidence attesting that the latter was unfit to perform any type of work within the RCMP for the foreseeable future. The ERC further found that the Force tried to accommodate the Grievor up to the point of undue hardship.

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

Commissioner of the RCMP's Final Decisions

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

Current Legislation Cases:

Conduct Appeals

C-030 – Conduct Authority Decision (*summarized in the October – December 2019* Communiqué) 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. 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 ERC recommended 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.

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

The Appellant is a Constable who was working a night shift on overtime. At approximately 10:30 p.m., he took a meal break at a Diner at which two women were present. The Appellant left the Diner, but stayed in the area and monitored traffic from a location across the street from the Diner. Later that night, the Appellant stopped one of the women after she left the Diner. The woman said she was not speeding and she was not given a ticket during this traffic stop. The Appellant gave her a business card with his nickname and his personal phone number hand-written on it. According to the woman, the Appellant invited her to call him if she was ever going out to certain parts of town. This incident was reported several months later and a *Code of Conduct* investigation was ordered into whether the Appellant had abused his authority (section 3.2) or acted in a manner that brought discredit to the Force (section 7.1). During the investigation the Appellant said that he did not remember the traffic stop, but denied pulling the woman over for romantic reasons. He also said that it was common for him to provide motorists his personal phone number and that he was generally friendly with people once he determined that he did not need to charge them with an offence.

After a conduct meeting, the Respondent found that the Appellant had abused his authority but did not establish the allegation of discreditable conduct because the misconduct was already addressed by the abuse of authority finding. As conduct measures, the Respondent ordered the Appellant to: forfeit six days of pay, review core values of RCMP with his line officer, and discuss police procedure for traffic stops with his immediate supervisor.

The Appellant appealed both the Respondent's findings and the conduct measures he imposed. During the appeal process, the Appellant submitted additional arguments after established deadlines.

On October 30, 2019, the ERC released its findings and recommendations. The ERC recommended that the late submissions not be allowed as they were late without justification and the substance of the documents did not warrant a retroactive time limit extension. The ERC recommended that the appeal of the findings be denied. The ERC recommended that the appeal of the conduct measures be allowed because the rationale for conduct measures was not sufficient. The ERC recommended that the forfeiture of pay be reduced from six days to two days.

The Appeal Adjudicator accepted most of the ERC recommendations, although the rationale for his decision was different from the ERC analysis in some respects. The Appeal Adjudicator agreed with the ERC that the forfeiture of pay should be reduced, however, the Appeal Adjudicator reduced it to a forfeiture of four days of pay instead of two days of pay as recommended by the ERC.

The Conduct Appeal Adjudicator denied the appeal of the Respondent's findings. The Conduct Appeal Adjudicator allowed the appeal of the conduct measures imposed. The Conduct Appeal Adjudicator maintained the remedial measures already imposed and reduced the forfeiture of pay from six days to four days.

C-032 – Conduct Authority Decision (*summarized in the January – March 2020* Communiqué) The Appellant, along with another RCMP officer, arrested an individual pursuant to provincial mental health legislation and brought him to a local hospital. The individual was not cooperative while being placed under arrest, but had calmed down by the time they arrived at the hospital. After being at the hospital for what the Appellant estimated to be roughly 90 minutes, he told the doctor treating the individual that he and the other officer would be leaving and to call hospital security or local police should the individual thereinafter pose a problem. Shortly after the Appellant left the hospital, the individual became agitated and threatened the doctor and other health care staff. Local police were called and dealt with the individual. The Respondent determined that the Appellant was asked by the doctor to remain at the hospital, but ignored this request. It is evident that the Respondent took the totality of the evidence into consideration including the doctor's assertion that she asked the Appellant to stay at the hospital, the lack of justification for leaving the hospital and the Appellant's decision to add to his PROS report after he realized a complaint had come forward. The ERC recommended that the appeal be denied.

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

On September 16, 2016, the Appellant and another RCMP officer responded to a report of a male (Patient). The members had to use force to take the Patient into custody so that he could be medically assessed, however, he subsequently became cooperative and apologetic. While the doctor was assessing the Patient, the doctor asked the Appellant and the other RCMP officer to remain at the hospital. The Appellant replied that "we don't normally do that" and advised her (and a hospital security guard) to contact the local police if there were any difficulties with the Patient. The Appellant and the other officer left the hospital and the doctor was subsequently required to contact the local police for assistance due to difficulties in controlling the Patient. The

local police contacted the RCMP and lodged a complaint that the RCMP officers should have remained at the hospital until he had been formally admitted.

The Respondent initiated a *Code of Conduct* investigation into whether the Appellant left his duty area without justification, contrary to section 4.2 of the *Code of Conduct*. The Conduct Meeting occurred on February 15, 2017, but the Appellant did not receive a decision from the Respondent until March 13, 2017. The Respondent found that the allegation was established. As conduct measures, the Respondent imposed a forfeiture of 20 days' pay and the deduction of 20 hours annual leave. Additional conduct measures imposed by the Respondent included a direction for the Appellant to write a letter of apology to the doctor, the decision that the Appellant would be ineligible for promotion for one year, and a written reprimand.

The Appellant has not challenged the Respondent's findings. However, the Appellant argued the decision was rendered in a manner that was procedurally unfair because it took so long for the Appellant to receive the decision. Also, the Appellant described the conduct measures as "harsh."

The Respondent contravened RCMP policy by not serving the Appellant the decision earlier, but this caused no prejudice to the Appellant so the ERC found that this mistake did not render the decision procedurally unfair. The ERC also found that the Appellant's submissions failed to demonstrate that the conduct measures were clearly unreasonable. The Conduct Appeal Adjudicator (Adjudicator) agreed with the ERC findings. The ERC recommended that the appeal of both the findings and the conduct measures should both be dismissed.

The Adjudicator agreed with the ERC findings (in some cases for different reasons) and accepted the ERC recommendations. The Adjudicator dismissed the appeal of both the findings and conduct measures.

C-033 – Conduct Authority Decision (*summarized in the January – March 2020* Communiqué) During a traffic stop of a motorhome, the Appellant seized currency from one of the three passengers of the motorhome as potential proceeds of crime. The passenger from whom the currency was seized stated at the time of the seizure that the seized currency contained a certain amount of money. The seized currency became an exhibit in a *Controlled Drugs and Substances Act* (*CDSA*) investigation. When the Appellant attempted to return the currency to the passenger, 16 days after the date of the traffic stop, he counted the currency in front of her and found that there was a different amount in the exhibit bag than the amount that the passenger had stated when currency was seized. She disputed the amount of currency that the Appellant had counted. The ERC recommended to the Commissioner of the RCMP that she deny the appeal in respect of the conduct measures and confirm the conduct measures of two days' forfeiture of pay and a direction for the Appellant to review and discuss applicable policies with his supervisor related to the handling of currency and negotiable instruments pursuant to subsection 45.16(3)(a) of the *RCMP Act*.

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

The Appellant was subject of an investigation in which it was found that he contravened section 4.4 of the *Code of Conduct*. The Respondent imposed conduct measures of two days' forfeiture of pay and direction for the Appellant to review and discuss applicable policies with his supervisor related to the handling of currency and negotiable instruments.

The Appellant presented his appeal, arguing that the Respondent's decision was procedurally unfair and was clearly unreasonable.

The matter was referred to the ERC. The Chairperson recommended that the Commissioner deny the appeal and confirm the conduct measures as applied by the Respondent.

In agreement with the ERC, the Adjudicator determined that the Appellant had not established that the Respondent's decision to impose the aforementioned conduct measures contravened procedural fairness or was clearly unreasonable. In finding no reason to interfere with the Respondent's decision, the Adjudicator denied the appeal and in accordance with paragraph 45.16(3)(b) of the *RCMP Act*, confirmed the imposed conduct measures.

C-034 - Conduct Authority Decision (*summarized in the January – March 2020* Communiqué) The Appellant was involved in an interaction with a handcuffed and possibly intoxicated suspect who ultimately landed head-first on a cell block floor and suffered a facial wound which required stitches (Incident). The Appellant drafted police reports and notes regarding the Incident, which was captured by Force cameras (CCTV footage of the Incident). In those reports and notes, the Appellant framed the Incident as a failed attempt by him to physically stabilize a reeling suspect. The suspect complained about the Incident, and the Appellant became the subject of an assault charge that was stayed two or so years later. In light of the CCTV footage of the Incident, Use of Force report and other evidence, he concluded that both allegations were established and imposed various conduct measures. The ERC recommended that the appeal be denied.

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

The suspect was arrested. When he arrived at the X Detachment booking station, the suspect refused to comply with the instructions of the arresting officer, Cst. X. The Appellant was called to assist Cst. X and escorted the suspect to the cell block booking area. During the time in question, the suspect was handcuffed behind his back. The suspect subsequently resisted when the Appellant attempted to lodge him in cells for the night. The Appellant tried to gain control over the suspect. However, during a four-second incident, the suspect pulled away and began to fall headfirst in one direction. The Appellant prevented the suspect from falling in that direction, however, the Appellant's response caused the suspect to fall in another direction and he hit his head on the floor. The Appellant and Cst. X attempted to provide first aid to the suspect and they immediately notified their supervisors who attended the scene. Paramedics arrived and transported the suspect to the hospital where he received medical care before being returned to police custody the same evening. Both the Appellant and Cst. X provided written reports of the incident the same evening, without observing the CCTV recording of the incident.

On or about May 21, 2015, the suspect's defence counsel made a complaint that police reports were inconsistent with his review of the CCTV recording and alleged that his client was assaulted by the police. A *Code of Conduct* investigation was initiated into these allegations. On May 5, 2016, a Notice of Conduct Meeting was served on the Appellant, alleging a breach of sections 5.1 and 8.1 of the *Code of Conduct*. On May 10, 2016, the Appellant's criminal lawyer advised the Respondent in writing that he believed it was improper to hold the conduct meeting prior to the outcome of the criminal proceedings (which had not been stayed yet) and that the Appellant would not be providing any submissions during the conduct meeting. During the conduct meeting on May 13, 2016, the Appellant's lawyer raised two preliminary issues, and repeated his request for a postponement of the conduct meeting until after the criminal matter

had been resolved. Neither issue was addressed in the Record of Decision (ROD) and the conduct meeting proceeded. The Appellant, at the advice of counsel, made no submissions on the substance of the allegations.

In the ROD dated May 20, 2016, (and served on May 24, 2016) the Respondent relied on the UFE report and found both allegations were established on a balance of probabilities. On April 3, 2017, the criminal charge against the Appellant was stayed. On February 4, 2020, the ERC issued its report in which it concluded that the Respondent's decision was not clearly unreasonable and that the Conduct Appeal should be denied.

The Conduct Appeal Adjudicator (Adjudicator) accepted ERC recommendations on admissibility of both new evidence and late submissions, however, disagreed with the other ERC recommendations. The Adjudicator found the Respondent's decision was clearly unreasonable because it did not address preliminary issues raised by the Appellant's lawyer. The Adjudicator found that while the Appellant's reports did not describe events exactly as they appeared in the CCTV recording, they honestly described his perception of what happened at the time. The Adjudicator also found that while the Appellant's reaction to the suspect's pulling away was imperfect, the Appellant did not mean to harm the suspect and his actions were objectively reasonable in the circumstances. The Adjudicator found that the allegations that the Appellant had breached sections 5.1 and 8.1 of the *Code of Conduct* were not established and rescinded the conduct measures.

C-035 – Conduct Authority Decision (*summarized in the January – March 2020* Communiqué) Amid the escalation of a localized natural disaster, the Appellant was evacuated from his residential neighbourhood after a state of emergency was declared in the community. The subject member, a Constable stationed in the community, was scheduled for Regular Time-Off that day. The Appellant evacuated his young child, and drove to a nearby city unaffected by the natural disaster. The Appellant was scheduled to resume his shifts at his work location the following day. Instead, the Appellant reported to the divisional headquarters in the city to which he had driven, where the Appellant claims that he was "stood down" from duty by a member of superior rank. As the sole parent available to care for his child during the natural disaster, the Appellant remained with his child for the next few days. Following a conduct meeting, the Respondent issued a written decision wherein she concluded that the Appellant had breached subsection 4.1 of the *Code of Conduct*, which requires that members report for and remain on duty unless otherwise authorized. The ERC found that the Respondent's decision was clearly unreasonable. The ERC recommended to the Commissioner that she allow the appeal of the Respondent's finding on the allegation on the ground that the Respondent's decision is clearly unreasonable. The ERC further recommended that the Commissioner, in making the finding that the Respondent should have made pursuant to paragraph 45.16(2)(b) of the *RCMP Act*, conclude that the allegation is not established.

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

The Appellant was scheduled for Regular Time-Off (RTO) and on that day, a state of emergency was declared due to the threat of a natural disaster. The Appellant evacuated his family from his home just before the neighbourhood became heavily impacted by the natural disaster. They travelled to stay with a friend. Due to the terms of a strict custody arrangement, the Appellant was unable to leave his young child with any individual who was not a biological parent to his young child. The Appellant did not report for duty to assist with the evacuation and emergency efforts after a subsequent mandatory call-out was issued by the acting Officer in Charge (OIC) of

the Detachment. The Appellant informed the acting Sergeant at the Detachment about his situation.

The Appellant was scheduled to resume his work shift. In accordance with policy, he reported to his nearest post located at “X” Division Headquarters. There, a member of senior rank informed the Appellant that he was stood down from duty, and that any other members arriving would also be stood down as other members were being brought in. The member of senior rank then referred the Appellant to the Health Services Officer (HSO) and put him in touch with peer to peer services.

For several days thereafter, the Appellant remained with his young child as he was not prepared to leave them in the care of anyone other than their mother who had been evacuated elsewhere.

A *Code of Conduct* investigation was initiated and the investigation report was forwarded to the Respondent for review. Following a conduct meeting, the Respondent found on a balance of probabilities that the Appellant had failed to report for or remain on duty to assist with the evacuation of the community as part of the core emergency services, contrary to section 4.1 of the *Code of Conduct* (Allegation). As conduct measures, the Respondent imposed a written reprimand, direction for a review of the RCMP Core Values, a deduction of 12 hours of annual leave and a forfeiture of 12 hours of pay. The Appellant appealed the Respondent’s decision.

The case was referred to the ERC for a review. The ERC recommended that the appeal be allowed. The Conduct Appeal Adjudicator agreed after finding that the Respondent’s decision was clearly unreasonable by not addressing the Appellant’s argument that he was otherwise authorized to be absent from duty based on his understanding that he was stood down after reporting to “X” Division Headquarters, and failing to adequately assess the family-related excuse for the Appellant’s absence from duty.

The Conduct Appeal Adjudicator allowed the appeal, found the Allegation not established, rescinded the conduct measures, and directed the Respondent to ensure that the Appellant is credited with 12 hours of annual leave and 12 hours of pay.

Other Appeals

NC-038 – Medical Discharge (*summarized in the October – December 2019* Communiqué) 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.” 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 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 ERC found that the process followed by the Respondent violated the principles of procedural fairness, in particular the Appellant’s right to be heard. The ERC recommended that the Adjudicator allow the appeal and remit the file to another decision-maker for a new decision.

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

[*Translation*]

On January 28, 2014, the Appellant left her workplace for health reasons and never returned to it, and based on the Order to Discharge, this led to her discharge on January 16, 2017.

The Appellant challenged the Respondent's decision, in his capacity as the Officer in Charge of Administration and Personnel, to discharge her due to a disability within the meaning of the *Canadian Human Rights Act*, since she believed that the decision contravened the applicable principles of procedural fairness, was based on an error of law and was clearly unreasonable.

Pursuant to section 17 of the *RCMP Regulations*, the appeal was referred to the ERC. A careful review of the file allowed the Chairperson of the ERC to conclude the following:

> …[*Translation*] *the discharge process must rigorously adhere to the principles of procedural fairness, particularly the right to be heard, and a member's right to request a meeting must be considered seriously. By ignoring the Appellant's request for a meeting and failing to exercise the discretion conferred upon him, the Respondent contravened the principles of procedural fairness by infringing on the Appellant's right to be heard.*

The Chairperson of the ERC recommended that the Adjudicator allow the appeal and remit the matter to another decision-maker for a new decision. The Adjudicator endorsed the recommendation particularly since the Record of Decision – Employment Requirements did not contain any reasons, and the Respondent had indicated in it that the Appellant had not requested a meeting when she had, thereby providing no reasons for his decision not to meet with the Appellant.

The appeal is allowed since the Respondent contravened the principles of procedural fairness, and since the decision is clearly unreasonable as there are no grounds in the Record of Decision – Employment Requirements. The matter must now be referred to the Commanding Officer, "X" Division, since the new incumbent of the Officer in Charge of Administration and Personnel position was, at the time, the Employee Management Relations Officer, who made the recommendation to discharge.

NC-039 – Harassment (*summarized in the October – December 2019* Communiqué) 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. The Respondent found that the Complaint was not established as the Alleged Harasser's actions did not, in his view, amount to harassment. The ERC found that the Respondent's decision revealed a manifest and determinative error of fact. 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. The ERC recommended that the Final Adjudicator allow the appeal and remit the matter to a decision-maker for a new decision.

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

The Appellant submitted a harassment complaint against the Alleged Harasser, which the Respondent found to be unsubstantiated for reasons the ERC Chairperson summarized as

follows:

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 behaviour, 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 [the 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.

Consequently, the Appellant presented this appeal arguing that the decision was clearly unreasonable. The ERC examined the appeal record and, for the following reasons, recommended the appeal be allowed and the matter remitted to a new decision-maker for a new decision:

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 [the 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 [a Public Service employee (PSE)]. [The PSE], 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. [The PSE] characterized the behaviour 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.

The Appeal Adjudicator readily agreed with the ERC findings, allowed the appeal and remitted the matter for a new decision by the current Commanding Officer "X" Division in accordance with subparagraph 47(1)(b)(i) of the *CSO (Grievances and Appeals)*.

NC-043 – Medical Discharge (*summarized in the October – December 2019* Communiqué) 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. 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. The ERC found that the Respondent's decision to deny the request that he recuse himself violated the principles of procedural fairness. The ERC recommended that the Adjudicator allow the appeal and remit the file to another decision-maker for a new decision.

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

[*Translation*]

The Appellant had been off work since November 2003, had a history of high absenteeism since he joined the RCMP, and was also suspended with pay on September 11, 2006. He was appealing the decision by the Officer in Charge of Administration and Personnel, "X" Division (OIC A&P/Respondent), to discharge him from the RCMP on the grounds that he was disabled within the meaning of the *Canadian Human Rights Act* (CHRA). It must be noted that in the years leading up to the medical discharge procedure, the Respondent was the Employee Management Relations Officer (EMRO), the EMRO in Charge of the Management of Occupational Health and Safety, "X" Division. Afterwards, in his capacity as the OIC A&P, he ended the Appellant's career in the RCMP, refusing to recuse himself from the discharge procedure, being of the opinion that his years as EMRO, where he had managed the Appellant's file, made him well informed of the particulars of the file. The Appellant claims that the impugned decision contravenes the applicable principles of procedural fairness, is based on "[*translation*] numerous errors of law" and is clearly unreasonable. In the Appellant's opinion:

> [*Translation*] *the procedures which can lead to an administrative discharge were not followed, the current provisions were not in effect retroactively, the accommodation measures were not implemented at all, there were no grounds to justify that type of discharge since no evidence can lead to conclude that the Appellant is unfit indeterminately or is disabled within the meaning of the CHRA; the decision maker clearly erred by not taking into consideration the submissions and revocation application submitted, and failed to consider the provisions relating to disciplinary measures and the Code of Conduct having precedence over the administrative discharge.*

Pursuant to section 17 of the *Royal Canadian Mounted Police Regulations, 2014* (SOR/2014-281), the appeal was referred to the ERC. A careful review of the file allowed the Chairperson of the ERC to conclude that the Respondent/OIC A&P had in fact breached the principles of procedural fairness by dismissing the Appellant's request for recusal. As the OIC A&P, the Respondent maintained his authority over the file, claiming he was well informed of its history since in his capacity as EMRO he had actively participated in the management of the Appellant's medical file, thereby confirming the reason his impartiality was called into question.

Since the ERC was of the opinion that a procedural error had been made in the Respondent's decision, it recommended that the Adjudicator allow the appeal and remit the matter for a new decision. After reviewing the case, and without hesitation, the Adjudicator hearing the case endorsed the ERC's recommendation and allowed the appeal, remitted the file to the Commanding Officer, "X" Division, for a new decision, and directed the RCMP to reinstate the Appellant retroactively.

NC-045 – Administrative Discharge (*summarized in the January – March 2020* Communiqué)
Between 2005 and 2015 the Appellant was absent from duty for medical reasons and/or participating in various forms of accommodation through modified work schedules, reduced hours of work, temporary relocation, duty restrictions, physical transfer, and multiple graduated return to work processes. On January 4, 2016, the Appellant started his last GRTW. The record indicates that the Appellant was performing well and he was respecting his RTW agreement. The record indicates that the Appellant had achieved working full time by March 1, 2016. However, the OIC of his unit prepared a Preliminary Recommendation to Discharge on the same day that

the Appellant started his latest GRTW, the Appellant was previously medically discharged from the Force. That discharge was appealed and the ERC recommended in NC-007 that the matter be remitted with directions for rendering a new decision because the Appellant's right to be heard had been denied.

The ERC found that the Respondent had made a manifest and determinative error in relying on the Appellant's involvement in outside activities and the related disciplinary matter (NC-007) in his assessment of the duty to accommodate. The ERC further found that the Respondent made a manifest and determinative error in his finding that these activities were not in line with the Appellant's limitations and restrictions. Lastly, the ERC found that the Force did not fulfill its duty to accommodate in that the Respondent based his assessment that the Force had reached undue hardship on assumptions and insufficient evidence. The ERC recommended that the appeal be allowed.

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

Final Level: Between 2005 and 2016, the Appellant was either absent from duty for medical reasons or was participating in various Graduated Return to Work (GRTW) plans through modified work schedules, reduced hours of work, temporary relocation, and duty restrictions. During this time, the Appellant successfully completed three GRTW plans.

On January 4, 2016, the Appellant commenced his last GRTW. The same day, the Respondent initiated discharge proceedings despite notes in the record indicating that the Appellant was performing well and respecting his return to work agreement. The Appellant was ultimately discharged from the Force.

The Appellant appealed and argued that the Respondent's decision was clearly unreasonable as the Force failed to establish that it accommodated him to the point of undue hardship.

The appeal was referred to the ERC for review, pursuant to paragraph 17(d)(i) of the *Royal Canadian Mounted Police Regulations, 2014*. The Chairperson of the ERC recommended that the appeal be allowed. The Adjudicator was not persuaded that the RCMP had accommodated the Appellant to the point of undue hardship and found that the Respondent's decision was clearly unreasonable. The appeal was allowed.

NC-046 – Harassment (*summarized in the January – March 2020* Communiqué) The Appellant appealed a decision by the Force which found that her complaint of harassment was not established. The Appellant's harassment complaint involved events surrounding her Graduated Return to Work (GRTW) and the Alleged Harasser's proposition that the Appellant's GRTW be continued at her home unit. Regarding the merits, the ERC found that the Respondent's decision was not clearly unreasonable as the Respondent had not misapprehended or ignored evidence. The ERC further found that the Respondent's decision was not clearly unreasonable as he had not erred in applying the law to the facts by failing to consider the allegations holistically. The ERC noted the requirement to consider whether allegations, while not individually constituting harassment, could cumulatively support a finding of harassment. The ERC found that the Respondent first considered each alleged incident on its own, and then considered the combined effect as required. The ERC recommended that the Commissioner deny the appeal and confirm the Respondent's decision.

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

office, is as follows:

The Appellant was under a Graduated Return to Work (GRTW) program in a unit other than her home unit. While the Appellant's direct supervision was overseen by this unit, the Alleged Harasser, the director of her home unit, was responsible for managing the Appellant's sick leave and GRTW. The Alleged Harasser began inquiring about the Appellant's progress with her GRTW, and these inquiries eventually resulted in discussions about the Appellant's return to her home unit to continue her GRTW.

The Appellant lodged a harassment complaint against the Alleged Harasser. The complaint included five allegations of harassment concerning the Alleged Harasser's refusal of her leave, the cancellation of her courses, the request that she return to her home unit, the removal of her personal belongings from her unit, and attempts by the Alleged Harasser to contact her directly and indirectly. The Respondent determined that the harassment complaint was not established. The Appellant presented an appeal challenging this decision raising the two following grounds of appeal: the Respondent erred in his consideration of the evidence, and the Respondent erred by failing to consider the incidents holistically. The Final Level Adjudicator accepted the ERC's recommendation and found no manifest or determinative error in the Respondent's decision. The Final Level Adjudicator dismissed the appeal.

NC-047 – Harassment (*summarized in the January – March 2020* Communiqué) On or about August 16, 2000, while on duty, the Appellant's firearm was stolen by two women. The Appellant alleged that the women stole the firearm from his vehicle while he was in a restaurant. The women alleged that the Appellant had invited them into his vehicle and while he was talking with one of them, the other stole the firearm. The Appellant reported the theft and was eventually charged with having conducted himself in a disgraceful manner that brings discredit to the Force contrary to the RCMP *Code of Conduct*. At first, the incident did not impact the Appellant's career. In 2010, an access to information request revealed that a Superintendent had told the Director administering promotions that there may have been more to the disciplinary matter than what had been disclosed in the Adjudication Board's decision. Following this, the Appellant began alleging that he was the victim of workplace harassment due to the spreading of gossip relating to the 2000 incident. By October 2016, the Appellant had not been promoted. As a result, he filed a harassment complaint against the former Commissioner of the RCMP. The ERC held that the Respondent made a palpable and overriding error in screening out the Appellant's complaint and not mandating an investigation. As a result, the ERC concluded that the decision on appeal is clearly unreasonable. The ERC recommended that the appeal be allowed.

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

The Appellant challenged the Respondent's decision that the harassment complaints against the former Commissioner and two Director Generals with the Executive Officer Development Resourcing unit had not been established specifying his appeal on the grounds that the decision was based on an error of law, contravened the principles of procedural fairness and was clearly unreasonable. The Appellant submitted that by failing to mandate an investigation the Respondent did not adhere to policy and as a result, critical information was ignored.

The ERC found that although the decision contained no error in law nor did it violate the rules of procedural fairness, it was clearly unreasonable. The ERC determined that by failing to mandate an investigation, the Respondent did not adhere to policy nor did he have the information required in order for him to establish that it was "inconceivable" that the allegations could be

considered harassment.

The ERC further found that the Respondent's decision was clearly unreasonable to have relied on the findings of the Federal Court of Appeal decision. In that decision, the Court found that the former Commissioner did not unfairly exercise his discretion in declining to promote the Appellant. The ERC determined that the Federal Court of Appeal decision had not decided the issue of harassment. The ERC recommended the appeal be allowed but determined that due to the passage of time and other factors, an investigation would be futile and recommended instead an apology to the Appellant.

The Appeal Adjudicator differed, finding that the Respondent's decision was not clearly unreasonable. Though a harassment complaint can merit an investigation, the Appeal Adjudicator found the applicable policy allowed discretion to a decision-maker to proceed in the absence of an investigation in the rare case where there is sufficient information respecting the facts which led to the complaint.

In this case, the Appeal Adjudicator found that the Federal Court of Appeal decision had discussed in detail the past history leading to the complaint and the Court ruled that the former Commissioner and senior management had not abused their authority nor engaged in harassment.

Accordingly, the Respondent's reliance on the Federal Court of Appeal decision made an investigation unnecessary. Moreover, considering the issue again pursuant to this appeal was determined to be inappropriate and contrary to the principle of issue estoppel. In conclusion, the Appeal Adjudicator found the Respondent's decision was not clearly unreasonable. Therefore, the Respondent's decision was confirmed, and the appeal dismissed.

NC-048 – Administrative Discharge (*summarized in the January – March 2020* Communiqué) For significant portions of a multi-year period, the Appellant was off duty with an expired medical profile and/or security certificate. She was repeatedly cautioned about her omissions to meet employment requirements, ordered to meet them and told that a failure to do so may lead to an Employment Requirements process and discharge for absence from duty without authorization. By late 2017, the Appellant remained off-duty without an updated medical profile or security clearance. The Respondent did not receive the Appellant's submission, and issued a decision ordering the Appellant discharge for being absent from duty without authorization (Original Decision). Days later, the Respondent emailed the Appellant to explain that she had only just received her written submission in response to the NOI, and that she would review the submission and then promptly make a revised decision. About a week later, the Respondent issued a new decision in which she addressed key positions in the Appellant's submission and ordered the Appellant's discharge for being absent from duty without authorization (Amended Decision).

The ERC determined that the Amended Decision, and not the Original Decision, was the decision under appeal. First, the Appellant's Employment Requirements process seemingly unfolded in a procedurally fair way, consistent with relevant authorities governing the provision of notice of a case and justification for a decision. Second, the Amended Decision did not appear clearly unreasonable. The ERC recommended that the appeal be denied.

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

In January 2008, the Appellant commenced her employment with the RCMP. Beginning mid-March 2011, the Appellant was off duty due to medical reasons. After her medical profile expired in May 2012, the Force took multiple steps to obtain updated medical information to update her profile and determine her ability to return to work. During this time, the Appellant's security clearance also expired. The Force attempted to schedule a new security interview to update the Appellant's security certificate. Despite being warned of the consequences of failing to update her medical profile or security clearance, the Appellant seldom communicated with the Force and failed to complete her Employer Mandated Medical Assessment, independent medical evaluation, and security interview. By late 2017, the Appellant remained off duty without an updated medical profile or security clearance.

An Employment Requirements process was soon after initiated. The Appellant was served with a Preliminary Recommendation to Discharge, Recommendation to Discharge, and Notice of lntent to Discharge (NOI) for being absent from duty without authorization. The Appellant responded to the NOI noting that she was unaware that she was absent without authorization, could not attend the schedule medical assessment because she was in the hospital, did not receive certain emails or communications from the Force, and that she followed every directive since being off duty sick. After reviewing the Appellant's submission, the Respondent ordered her discharge.

The Appellant challenged the Order to Discharge on the basis that the decision was procedurally unfair as she was not advised that she was absent from duty without authorization. She also argued that the decision lacked factual evidence and was based on fabricated allegations.

The appeal was referred to the ERC for review, pursuant to paragraph 17(d)(ii) of the *Royal Canadian Mounted Police Regulations, 2014*. The Chairperson of the ERC recommended that the appeal be denied. The Adjudicator was not persuaded by the Appellant's grounds of appeal and found that there was no breach of procedural fairness and the decision was not clearly unreasonable. The appeal was dismissed.

NC-049 – Administrative Discharge (*summarized in the January – March 2020* Communiqué) The Appellant appealed a decision by the Force which found that his complaint of harassment was untimely and based on behaviours that did not meet the definition of “harassment” set out in RCMP policy. The Appellant’s harassment complaint alleged that the Appellant’s Recruit Field Coach had embarrassed and intimidated the Appellant. The Appellant alleged on appeal that he had a legitimate explanation for the delay in filing his harassment complaint. He further argued that the Respondent’s decision had breached the principles of procedural fairness and was clearly unreasonable as the Alleged Harasser’s behaviours clearly met the definition of harassment and the decision contained incorrect statements of fact. The ERC found that the Appellant had not respected the 14-day statutory time limit to appeal and that an extension of that time limit was not warranted. The ERC recommended that the Commissioner deny the appeal and confirm the Respondent’s decision.

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

The Appellant was a recruit in X Detachment. On December 12, 2017, the Appellant presented a harassment complaint (Complaint) against his coach (Alleged Harasser) for his behaviour between May 17, 2016, and July 29, 2016. The Respondent found that the Complaint was presented after the one-year limitation period for harassment complaints had expired and was more appropriately addressed as a performance issue. The Appellant filed an appeal of this decision approximately three months after he received it. The Office for the Coordination of

Grievances and Appeals (OCGA) raised the concern that this appeal was submitted after the 14-day limitation period for appeals had expired. Submissions on both the preliminary issue of timeliness and the merit of the Appeal were presented to the ERC and then the Adjudicator. The ERC recommended that this appeal be dismissed because it was filed outside the 14-day limitation period prescribed by section 38 of the *Commissioner's Standing Orders (Grievances and Appeals)* and no exceptional circumstances justified a retroactive time limit extension. The Adjudicator agreed with the ERC recommendations and dismissed the appeal.

NC-050 – Harassment (*summarized in the January – March 2020* Communiqué) On or about August 16, 2000, while on duty, the Appellant's firearm was stolen by two women. The Appellant alleged that the women stole the firearm from his vehicle while he was in a restaurant. The women alleged that the Appellant had picked them up and while he was talking with one of them, the other took the firearm. The Appellant reported the theft and was eventually charged with having conducted himself in a disgraceful manner that brings discredit to the Force contrary to the RCMP *Code of Conduct*. At first, the incident did not negatively impact the Appellant's career. In 2010, an access to information request revealed that a Superintendent had told the Director administering promotions that there may have been more to the disciplinary matter than what had been disclosed in the Adjudication Board's decision. Following this, the Appellant began alleging that he was the victim of workplace harassment due to the spreading of gossip relating to the 2000 incident. By October 2016, the Appellant had not been promoted. As a result, he filed a harassment complaint against the Director General, Executive Officer Development and Resourcing (2015). The ERC held that the Respondent made a palpable and overriding error in finding that the Appellant's complaint was unestablished without clarifying information having been sought from the Appellant. This omission prevented the Respondent from making an informed assessment of whether an investigation into the complaint was warranted. As a result, the ERC concluded that the decision on appeal is clearly unreasonable. The ERC recommended that the appeal be allowed.

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

The Appellant challenged the Respondent's decision that the harassment complaints against the former Commissioner and two Director Generals with the Executive Officer Development Resourcing unit had not been established specifying his appeal on the grounds that the decision was based on an error of law, contravened the principles of procedural fairness and was clearly unreasonable. The Appellant submitted that by failing to mandate an investigation the Respondent did not adhere to policy and as a result, critical information was ignored.

The ERC found that although the decision contained no error in law nor did it violate the rules of procedural fairness, it was clearly unreasonable. The ERC determined that by failing to mandate an investigation, the Respondent did not adhere to policy nor did he have the information required in order for him to establish that it was "inconceivable" that the allegations could be considered harassment.

The ERC further found that the Respondent's decision was clearly unreasonable to have relied on the findings of the Federal Court of Appeal decision. In that decision, the Court found that the former Commissioner did not unfairly exercise his discretion in declining to promote the Appellant. The ERC determined that the Federal Court of Appeal decision had not decided the issue of harassment. The ERC recommended the appeal be allowed but determined that due to the passage of time and other factors, an investigation would be futile and recommended instead an apology to the Appellant.

The Appeal Adjudicator differed, finding that the Respondent's decision was not clearly unreasonable. Though a harassment complaint can merit an investigation, the Appeal Adjudicator found the applicable policy allowed discretion to a decision maker to proceed in the absence of an investigation in the rare case where there is sufficient information respecting the facts which led to the complaint.

In this case, the Appeal Adjudicator found that the Federal Court of Appeal decision had discussed in detail the past history leading to the complaint and the Court ruled that the former Commissioner and senior management had not abused their authority nor engaged in harassment.

Accordingly, the Respondent's reliance on the Federal Court of Appeal decision made an investigation unnecessary. Moreover, considering the issue again pursuant to this appeal was determined to be inappropriate and contrary to the principle of issue estoppel. In conclusion, the Appeal Adjudicator found the Respondent's decision was not clearly unreasonable. Therefore, the Respondent's decision was confirmed, and the appeal dismissed.

NC-051 – Harassment (*summarized in the January – March 2020* Communiqué) On or about August 16, 2000, while on duty, the Appellant's firearm was stolen by two women. The Appellant alleged that the women stole the firearm from his vehicle while he was in a restaurant. The women alleged that the Appellant had invited them into his vehicle and while he was talking with one of them, the other stole the firearm. The Appellant reported the theft and was eventually charged with having conducted himself in a disgraceful manner that brings discredit to the Force contrary to the RCMP *Code of Conduct*. At first, the incident did not impact the Appellant's career. In 2010, an access to information request revealed that a Superintendent had told the Director administering promotions that there may have been more to the disciplinary matter than what had been disclosed in the Adjudication Board's decision. Following this, the Appellant began alleging that he was the victim of workplace harassment due to the spreading of gossip relating to the 2000 incident. By October 2016, the Appellant had not been promoted. As a result, he filed a harassment complaint against the Director General, Executive Officer Development and Resourcing (2016). The ERC held that the Respondent made a palpable and overriding error in screening out the Appellant's complaint and not mandating an investigation. As a result, the ERC concluded that the decision on appeal is clearly unreasonable. The ERC recommended that the appeal be allowed.

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

The Appellant challenged the Respondent's decision that the harassment complaints against the former Commissioner and two Director Generals with the Executive Officer Development Resourcing unit had not been established specifying his appeal on the grounds that the decision was based on an error of law, contravened the principles of procedural fairness and was clearly unreasonable. The Appellant submitted that by failing to mandate an investigation the Respondent did not adhere to policy and as a result, critical information was ignored.

The ERC found that although the decision contained no error in law nor did it violate the rules of procedural fairness, it was clearly unreasonable. The ERC determined that by failing to mandate an investigation, the Respondent did not adhere to policy nor did he have the information required in order for him to establish that it was "inconceivable" that the allegations could be considered harassment.

The ERC further found that the Respondent's decision was clearly unreasonable to have relied on the findings of the Federal Court of Appeal decision. In that decision, the Court found that the former Commissioner did not unfairly exercise his discretion in declining to promote the Appellant. The ERC determined that the Federal Court of Appeal decision had not decided the issue of harassment. The ERC recommended the appeal be allowed but determined that due to the passage of time and other factors, an investigation would be futile and recommended instead an apology to the Appellant.

The Appeal Adjudicator differed, finding that the Respondent's decision was not clearly unreasonable. Though a harassment complaint can merit an investigation, the Appeal Adjudicator found the applicable policy allowed discretion to a decision maker to proceed in the absence of an investigation in the rare case where there is sufficient information respecting the facts which led to the complaint.

In this case, the Appeal Adjudicator found that the Federal Court of Appeal decision had discussed in detail the past history leading to the complaint and the Court ruled that the former Commissioner and senior management had not abused their authority nor engaged in harassment.

Accordingly, the Respondent's reliance on the Federal Court of Appeal decision made an investigation unnecessary. Moreover, considering the issue again pursuant to this appeal was determined to be inappropriate and contrary to the principle of issue estoppel. In conclusion, the Appeal Adjudicator found the Respondent's decision was not clearly unreasonable. Therefore, the Respondent's decision was confirmed, and the appeal dismissed.

NC-052 – Administrative Discharge (*summarized in the January – March 2020* Communiqué)
The Appellant has been a member of the RCMP since 2009 and has been assigned to the same unit since the beginning of her career. She went on sick leave for the first time from February 2012 until February 2014. She went back on sick leave in November 2015 and made an unsuccessful return to work attempt in January/February 2016. No return to work attempts have been made since then. An Employer Mandated Medical Assessment (EMMA) conducted in February 2017 indicated that the Appellant was fit to return to work without limitations/restrictions. Following the EMMA, the Appellant's attending physician disagreed with it. The Appellant then sent the RCMP a gradual return-to-work schedule that had been accepted by her attending physician. The ERC found that the RCMP had fulfilled its duty to accommodate to the point of undue hardship in that the Appellant had spent more than half of her career on sick leave and the OHSS had concluded that there was no new medical information on the record that could alter the Appellant's medical profile. The ERC recommended that the appeal be dismissed.

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

[*Translation*]

The Appellant has been a member of the RCMP since 2009. In February 2012, the Appellant went on medical leave until February 2014. In November 2015, she went back on medical leave, and a return to work was attempted unsuccessfully in February 2016. No attempts to return to work have been made since.

In February 2017, an Employer Mandated Medical Assessment (EMMA) showed that the Appellant was fit to return to work without limitations or restrictions. A gradual return to work plan over four weeks was suggested to the Appellant. The Appellant's attending physician disagreed with the plan, indicated that the latter was still unfit to work and prescribed an extended work stoppage. Consequently, the RCMP Health Services Officer (HSO) reviewed the Appellant's medical record, deemed her permanently unfit to work at the RCMP, and changed her medical profile to G6-O6. The Appellant then sent the RCMP a return to work plan and her attending physician submitted a form to the effect that she was fit for a gradual return to work. The HSO reviewed this new information and concluded that the Appellant's medical profile could not be changed based on this information. The discharge procedure was launched against the Appellant, and on June 19, 2018, the Respondent decided that the Appellant had to be discharged from the RCMP on the grounds that she was no longer able to meet the employment requirements due to a disability within the meaning of the *Canadian Human Rights Act*.

The Appellant is appealing this decision on the grounds that the Respondent's decision contravenes the applicable principles of procedural fairness, is based on an error in law and is clearly unreasonable.

The file was referred to the ERC for an in-depth review pursuant to subparagraph 17(d)(i) of the *Royal Canadian Mounted Police Regulations, 1988*, SOR/2014-281. The Chairperson of the ERC recommended that the appeal be dismissed. The Adjudicator accepted the ERC's recommendation and dismissed the appeal.

Former Legislation Cases:

Grievances

G-665 – Legal Assistance at Public Expense (*summarized in the July – September 2019* Communiqué) The Grievor was the subject of two disciplinary notices. He was assigned a member representative (MR), but she went on sick leave before she could represent him at his hearings. Before a second MR could be designated, the Grievor hired a private lawyer and spent approximately $2,000 to review his case for the disciplinary hearing. Subsequently, the RCMP designated other MRs to deal with the Grievor, but each of them was ultimately unable to represent him because, according to the Grievor, their language or legal skills were unsatisfactory or, in one case, the MR was located too far from his region. In his grievance, the Grievor alleged that the Force was unable to provide him with adequate representation using the MR system. As a result, he was entitled to hire a private lawyer and to be reimbursed for legal expenses incurred. He relied on the RCMP's policy on legal assistance at public expense and stated that he had met the criteria set out in that policy to be reimbursed for such expenses. The ERC found that provision D.8. of Chapter VIII.4 of the Administration Manual (Legal Assistance at Public Expense for RCMP Employees) specifically prohibited legal assistance at public expense when the employee was involved in an internal RCMP process. In addition, although the Treasury Board policy does not provide for this restriction, it does indicate that the Grievor must have met the RCMP's expectations. The ERC also found that the Grievor had not requested prior authorization to incur the fees of his outside counsel and that he could therefore not be reimbursed. The ERC recommended that the grievance be denied.

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

[*Translation*]

The Grievor challenges the decision not to provide him with Legal Assistance at Public Expense and the fact that he was not reimbursed for costs incurred for meetings with a private lawyer. The External Review Committee is of the opinion that the Respondent complied with the applicable Treasury Board and RCMP policies and therefore recommends that the Commissioner deny the grievance. The Commissioner agrees with the recommendations of the External Review Committee and hereby denies the grievance.

G-668 – Harassment (*summarized in the October – December 2019* Communiqué) The Grievor is employed by a community police services. 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 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 ERC found that the Respondent was required to assess the allegations not only one by one, but also as a whole. 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. 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:

[*Translation*]

The Grievor filed a grievance challenging the Respondent's decision to dismiss her harassment complaint at the screening stage.

The Level I Adjudicator dismissed the merits of the grievance.

The Commissioner accepted the ERC's recommendations, and found that the Respondent had not followed the policy in Chapter XII.7 of the Administration Manual when processing the Grievor's harassment complaint. The grievance is allowed. However, given the time that has passed since the complaint was filed, the Commissioner did not refer the matter back to the screening stage. The Commissioner sincerely apologized to the Grievor for the RCMP's failure to process her harassment complaint in accordance with the Treasury Board Policy on Prevention and Resolution of Harassment in the Workplace, and Chapter XII.7 of the Administration Manual.

G-669 – Harassment (*summarized in the October – December 2019* Communiqué) The Grievor is employed by a community police services section. On August 18, 2010, the Grievor filed a harassment complaint against the Alleged Harasser in relation to two emails. The complaint included two allegations. The Level I Adjudicator indicated that the Grievor had not explained how the Respondent had erred in the process. He therefore denied the grievance. At Level II, the Grievor maintained that the Respondent did not properly apply the definition of harassment. 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. 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:

[*Translation*]

The Grievor filed a grievance challenging the Respondent's decision to dismiss her harassment complaint at the screening stage.

The Level I Adjudicator dismissed the merits of the grievance.

The Commissioner accepted the ERC's recommendations, and found that the Respondent's decision was contrary to the Treasury Board Policy on Prevention and Resolution of Harassment in the Workplace. The grievance is allowed. However, given the time that has passed since the complaint was filed, the Commissioner did not refer the matter back to the screening stage. The Commissioner sincerely apologized to the Grievor for the RCMP's failure to process her harassment complaint in accordance with the Treasury Board Policy on Prevention and Resolution of Harassment in the Workplace, and Chapter XII.7 of the Administration Manual.

G-670 – Harassment (*summarized in the October – December 2019* Communiqué) The Alleged Harasser was the Grievor's immediate supervisor. On November 20, 2009, the Grievor filed a harassment complaint against the Alleged Harasser. This complaint included two allegations. On February 17, 2010, the HRO concluded that the allegations did not meet the definition of harassment and accordingly dismissed the complaint. The Level I Adjudicator indicated that the Grievor had not explained how the Respondent had erred in the process and, accordingly, he denied the grievance. 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. 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:

[*Translation*]

The Grievor filed a grievance challenging the Respondent's decision to dismiss her harassment complaint at the screening stage.

The Level I Adjudicator dismissed the merits of the grievance.

The Commissioner accepted the ERC's recommendations, and found that the Respondent's decision was contrary to the Treasury Board Policy on Prevention and Resolution of Harassment in the Workplace. The grievance is allowed. However, given the time that has passed since the complaint was filed, the Commissioner did not refer the matter back to the screening stage. The Commissioner sincerely apologized to the Grievor for the RCMP's failure to process her harassment complaint in accordance with the Treasury Board Policy on Prevention and Resolution of Harassment in the Workplace, and Chapter XII.7 of the Administration Manual.

G-671 – Harassment (*summarized in the October – December 2019* Communiqué) The Alleged Harasser was the Grievor's immediate supervisor. 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 ERC found that the Respondent erred in his finding that the allegation did not meet the definition of harassment. The ERC found that the Respondent should have analyzed the allegation by applying the concept of abuse of authority. 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:

[*Translation*]

The Grievor filed a grievance challenging the Respondent's decision to dismiss her harassment complaint at the screening stage.

The Level I Adjudicator dismissed the merits of the grievance.

The Commissioner accepted the ERC's recommendations, and found that the Respondent's decision was contrary to the Treasury Board Policy on Prevention and Resolution of Harassment in the Workplace. The grievance is allowed. However, given the time that has passed since the complaint was filed, the Commissioner did not refer the matter back to the screening stage. The Commissioner sincerely apologized to the Grievor for the RCMP's failure to process her harassment complaint in accordance with the Treasury Board Policy on Prevention and Resolution of Harassment in the Workplace, and Chapter XII.7 of the Administration Manual.

G-672 – Harassment (*summarized in the October – December 2019* Communiqué) The Alleged Harasser was the Grievor's immediate supervisor. The Grievor filed a harassment complaint on August 18, 2010, against the Alleged Harasser for writing an email. 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. The ERC found that this file had become moot since its subject matter had been dealt with in a previous grievance. The ERC recommended that the grievance be denied.

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

[*Translation*]

The Grievor filed a grievance challenging the Respondent's decision to dismiss her harassment complaint at the screening stage. The Grievor had challenged this same decision in another grievance in which the Commissioner rendered a decision. In G-669, the Commissioner allowed the grievance, and reversed the Respondent's decision to dismiss the Grievor's harassment complaint.

The Level I Adjudicator dismissed the merits of the grievance.

The Commissioner accepted the ERC's recommendations, and found that the grievance was moot insofar as a decision on the same issue had already been rendered in G-669. She also found that there was no basis to exercise her discretion to decide on the Grievor's request on the merits despite the mootness of the case. The grievance is denied.

G-673 – Harassment (*summarized in the October – December 2019* Communiqué) The Alleged Harasser was the Grievor's immediate supervisor. On June 11, 2013, the Grievor filed a harassment complaint against the Alleged Harasser. 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. The ERC recommended that the grievance be denied.

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

[*Translation*]

The Grievor filed a grievance challenging the Respondent's decision to dismiss her harassment complaint.

The Level I Adjudicator dismissed the merits of the grievance.

The Commissioner accepted the ERC's recommendations, and found that the Grievor had not discharged her burden of establishing that the Respondent's decision was contrary to the applicable statutes and policies.

G-678 – Time Limits (*summarized in the October – December 2019* Communiqué) 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. He 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. 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 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 ERC recommended that the grievance be allowed on the grounds that the Level I prescribed time limit was met.

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

[*Translation*]

The Grievor is challenging the Respondent's decision to ask him to reimburse an $842.42 allowance he received for a house hunting trip (HHT). At Level I, the Adjudicator found that the Grievor had not filed his grievance in time, pursuant to paragraph 31(2)(a) of the *Royal Canadian Mounted Police Act*. The Grievor then submitted his case at Level II, which then referred the matter to the ERC. The Commissioner of the RCMP accepted the ERC's recommendation to the effect that the Grievor had in fact filed his grievance in time. The grievance is allowed, and the parties are invited to submit their arguments relating to the merits of the grievance.

G-679 – Time Limits (*summarized in the October – December 2019* Communiqué) The Grievor was transferred to a new position. 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. 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 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 Level I Adjudicator dismissed the grievance on the ground raised by the Respondent, namely that it had not been filed on time. 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 ERC recommended that the grievance be allowed on the grounds that the Level I prescribed time limit was met.

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

[*Translation*]

The Grievor is challenging the Respondent's decision to ask him to reimburse a $100.00 PNAA. At Level I, the Adjudicator found that the Grievor had not filed his grievance in time pursuant to paragraph 31(2)(a) of the *Royal Canadian Mounted Police Act*. The Grievor then submitted the grievance at Level II, which then referred it to the ERC. The Commissioner of the RCMP accepted the ERC's recommendation to the effect that the Grievor had in fact lodged his grievance in time. The grievance is allowed, and the parties are invited to submit their arguments relating to the merits of the grievance.

G-686 – Participation in Outside Activity (*summarized in the January – March 2020* Communiqué) In 2014, the Grievor made a request to the Respondent to participate in an activity outside of work. After taking into account information provided by various RCMP subject-matter experts and information provided by the Grievor about the activity outside of work, the Respondent denied the request in June 2014. The Respondent's reasons for the denial were that participants in the activity outside of work adopted a manner of dress similar to those engaged in criminal activity, the personal safety of the Grievor, and risks to the Grievor's security clearance. In 2019, a Level II Adjudicator raised a question as to whether the grievance was moot, noting that the Grievor had been discharged from the RCMP even before the Level I Adjudicator had addressed the matter in 2018. The ERC found that merit issues raised in the grievance were moot and that there were no compelling reasons to exercise discretion to examine the merits. The ERC recommended that the Commissioner dismiss this grievance as it was found to be moot.

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

The Grievor challenged a decision by the Human Resources Officer, "X" Division, to deny his request to participate in an activity outside of work. The issue of timeliness was first raised by the OCG, followed by the Respondent. A Level I Adjudicator granted the Grievor a retroactive extension to the limitation period for filing a grievance at Level I, as his health impacted his ability to inform himself of relevant policy and file a timely grievance. At Level I, an Adjudicator denied the grievance on its merits, finding that the Respondent's decision contained extensive information and intelligence from the RCMP and other law enforcement bodies, and that it was

not arbitrary. The Grievor sought a review at Level II. The Level II Adjudicator raised the issue of mootness as the Grievor was retired. She also found that the Grievor's arguments related to his *Charter* rights rendered the grievance referable to the ERC. The ERC recommended that the grievance be denied on the basis that it was moot and there were no compelling reasons to consider the issues. The Commissioner accepts the recommendation to dismiss the grievance.

G-687 – Participation in Outside Activity (*summarized in the January – March 2020* Communiqué) In 2014, the Grievor made a request to the Respondent to participate in an activity outside of work. After taking into account information provided by various RCMP subject-matter experts and information provided by the Grievor about the activity outside of work, the Respondent denied the request in June 2014. The Respondent's reasons for the denial were that participants in the activity outside of work adopted a manner of dress similar to those engaged in criminal activity, the personal safety of the Grievor, and risks to the Grievor's security clearance. In 2019, a Level II Adjudicator raised a question as to whether the grievance was moot, noting that the Grievor had been discharged from the RCMP even before the Level I Adjudicator had addressed the matter in 2018. The ERC found that merit issues raised in the grievance were moot and that there were no compelling reasons to exercise discretion to examine the merits. The ERC recommended that the Commissioner dismiss this grievance as it was found to be moot.

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

The Grievor challenged a decision by the Human Resources Officer, "X" Division, to deny her request to participate in an activity outside of work. The issue of timeliness was first raised by the OCG, followed by the Respondent. A Level I Adjudicator granted the Grievor a retroactive extension to the limitation period for filing a grievance at Level I, as her health had impacted her ability to inform herself of relevant policy and file a timely grievance. At Level I, an Adjudicator denied the grievance on its merits, finding that the Respondent's decision contained extensive information and intelligence from the RCMP and other law enforcement bodies, and that it was not arbitrary. The Grievor sought a review at Level II. The Level II Adjudicator raised the issue of mootness as the Grievor was retired. She also found that the Grievor's arguments relating to her *Charter* rights rendered the grievance referable to the ERC. The ERC recommended that the grievance be denied on the basis that it was moot and there were no compelling reasons to consider the issues. The Commissioner accepts the recommendation to dismiss the grievance.