Communiqué – October to December 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 October and December 2020, the RCMP External Review Committee (ERC) issued the following 33 findings and recommendations:

Current Legislation Cases:

Conduct Appeals

C-041 – Conduct Authority Decision

In 2010, the Appellant reported a weapon that the Force had seized and stored as an exhibit as "destroyed". However, instead of destroying the weapon at work, he took it home to destroy it. He never got around to doing so. Soon thereafter, the weapon was seized from his home. Statutory and *Code of Conduct* investigations were held.

Following the investigations and a Conduct Meeting, the Respondent found that two allegations against the Appellant were established. Namely, the Appellant was found to have mishandled a Force exhibit and to have made a false report regarding how he handled it, contrary to sections 4.4 and 8.1 of the *Code of Conduct*, respectively. The Respondent imposed conduct measures that were intended to cover both violations together. The most notable measures included a 20-day forfeiture of leave and an indefinite rank demotion.

The Appellant presented an appeal. He made several arguments concerning the fairness and reasonableness of the Respondent's decision. One argument was that, although he made a mistake and deserved to face consequences, the Respondent did not properly consider the mitigating factors, and this led to the ordering of conduct measures that were simply too severe.

ERC Findings: The ERC found most of the Appellant's positions to be without merit. Generally, the Respondent's decision was reached fairly, the *Code of Conduct* investigation was not in any way deficient and no relevant evidence or arguments were ignored. The Respondent also used the correct process for determining conduct measures, and relied on proper aggravating factors.

However, the ERC agreed that the Respondent did not adequately consider mitigating factors. The Respondent described as mitigating factors "Medical issues" and "Stressors in personal life". Those descriptions were too vague to have enabled a proper analysis of the severity of the Appellant's misconduct. His challenges were numerous, harsh, long-lasting and collectively extraordinary. This could have helped explain why he did not destroy the exhibit for lengthy periods. They merited more consideration in the Decision than brisk bullet points or bare assurances that mitigating factors had been reviewed. If they were unpacked and carefully examined, both individually and together with the Respondent's findings that the misconduct was isolated and unlikely to reoccur, this could have resulted in the ordering of different conduct measures.

ERC Recommendation: The ERC recommends that this appeal be allowed in part. Specifically, it recommends that the Appellant's indefinite demotion be reduced to a two-year demotion that concluded effective June 25, 2020.

C-042 – Conduct Board Decision

This is an appeal by a Conduct Authority requesting the member be directed to resign within 14 days or face dismissal from the Force.

The member was charged with four allegations relating to his conduct at an off-duty party held for a family member's section. Both the member and the family member belong to an RCMP unit. The member appeared before a Conduct Board where the four allegations under the *Code of Conduct* were deemed established. Three of the established allegations were under section 7.1 of the *Code of Conduct* and one was under section 2.1 of the *Code of Conduct*. The Board found that in respect of the section 2.1 allegation, neither sexual harassment nor sexual harassment in the workplace occurred. The Board made a finding that the member's conduct amount to discourteous conduct.

In addition to ordering continued treatment and other sanctions, the Board sanctioned the member to a total loss of 45 days of pay.

The Appellant, in addition to the sanction referred to above, submitted that the Board made an error in law in finding that sexual harassment in the workplace did not occur. Further, the Appellant argued that the Board should have considered all of the events globally and had it done so, would have determined that resignation/dismissal was the appropriate sanction in this case.

ERC Findings: The ERC found that the Appellant was correct in respect to the Board's finding that discourteous conduct and not sexual harassment in the workplace took place. There was a sufficient nexus between the events in question and how it affected one of the victims in the workplace to determine that the Board erred in law, especially in light of the fact that it did not even refer to the applicable harassment provisions.

ERC Recommendation: The ERC recommends that the sanction of five days' loss of pay in respect of this allegation be set aside and 20 days' loss of pay be directed by the Commissioner.

The ERC recommends that the sanction of five days' loss of pay in respect of this allegation be set aside and 20 days' loss of pay be directed by the Commissioner.

The ERC agreed with the Appellant that under normal conditions, dismissal in these circumstances would have been the appropriate sanction. However, the Board was obliged to consider both aggravating and mitigating evidence when making its determination as to appropriate sanctions. There was overwhelming and compelling mitigating evidence in favour of the member, all relating from work and other matters that were dealt with in the report, to determine that dismissal was not appropriate here.

With respect to the other three allegations, the ERC recommends that the imposed sanctions stand.

C-043 – Conduct Board Decision

In February 2015, the Appellant noticed, upon returning to his vehicle, that it had been vandalized and objects were taken from his vehicle. On his way home, he accidentally drove into a roadway sign, which further damaged his vehicle. Shortly thereafter, he reported the damage to his insurer and initiated a claim for vandalism. He did not advise the insurer that some of the

damage was attributable to his hitting a sign. Later, he brought his vehicle to a professional for repairs, where he again claimed that all the damage to his vehicle had been caused by vandalism. The repair shop felt the damage could not solely be attributable to vandalism, and the insurer placed the repair on hold. The Appellant then spoke to an RCMP investigator conducting the theft investigation. He failed to report to the investigator that half the reported damage to his vehicle was unrelated to vandalism/theft and had, in fact, been caused by a collision. The Appellant subsequently reiterated, in a statement to an insurance adjuster, and insurance investigator and in a solemn declaration to a notary public, that the damage caused to his vehicle was exclusively the result of vandalism. On April 29, 2015, the Appellant pleaded guilty to a charge of providing false or misleading information contrary to the *Insurance Act* (judicial proceedings).

There were two *Code of Conduct* allegations brought against the Appellant. The *Code of Conduct* hearing proceeded by way of an Agreed Statement of Fact. The Conduct Board (Board) found the two allegations to be established. The Board then held a hearing on appropriate conduct measures. The Conduct Authority (CA) sought dismissal, and the Appellant sought a forfeiture of pay.

The Board ordered the Appellant to resign. Despite mitigating factors, significant aggravating factors were present. The Board referred to the Appellant's "criminal conviction" as an aggravating factor, and explicitly disagreed with the provincial judge's characterization of the misconduct as an isolated act. As well, given *McNeil* considerations, deployment of the Appellant would cause an administrative burden on the Force. Finally, the Appellant sought a personal benefit as his conduct avoided a deductible cost and avoided accountability for a single-vehicle collision.

The Appellant appealed the conduct measure. He argued that the Board erred in finding that the Appellant was motivated by personal gain; that there was planned and wilful deception, revealing a character flaw; and that the Board erred in its findings regarding the impact of a *McNeil* disclosure obligation. The Appellant further argues that the Board erred in minimizing mitigating factors and overstating aggravating factors. In his appeal submission, the Appellant requested to make further submissions on the range of conduct measures and be granted a case meeting with the Adjudicator before a final decision.

ERC Findings: The ERC found that a supplemental submissions on the range of conduct measures should not be allowed. At the hearing, the Appellant had made submissions on the appropriate range and cannot revisit this position on appeal. Because a case meeting would be held after the ERC's F&R, the ERC indicated that the decision to hold a case meeting would be the Final Adjudicator's.

The ERC found that there was evidence that led the Board to make the finding that the Appellant was also motivated by avoiding accountability for his single-vehicle collision. Further, this issue was raised by the CA representative in his submissions on the allegations and in the Board's decision on the allegations. Yet, the Appellant chose not to address this issue.

The ERC further found that the Board's reasons regarding its finding that the Appellant was on an extended campaign to defraud were sufficient. The Board clearly explained why it made this finding; namely, that the Appellant kept to his lie for five weeks, to three organizations and several individuals.

The ERC found that the Board properly accepted the opinion of an RCMP member regarding the

impact of *McNeil*. It found that lay witnesses can present their observations as opinions where they are merely giving a brief statement of facts and if they are in a better position than the trier of facts to form the opinion.

The ERC found that the Board's finding regarding the fact that the misconduct was not an isolated act does not constitute an improper relitigation of the finding of the provincial court judge. The issue before the Board was distinguishable from the issue before the provincial court judge.

Lastly, the ERC found that the Board did not err in its assessment of the mitigating and aggravating factors. The Board's findings on these issues were all supported by the record. Although the Board referred to a "criminal" conviction, the error was not determinative in this case and there was evidence that the Board was aware that the Appellant had not been convicted of a criminal offence.

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

C-044 – Conduct Authority Decision

The Appellant parked her police vehicle inside a parkade where she and other on-duty members were staying during an operation. She left several items overnight unsecured in the vehicle, including her loaded RCMP pistol, three loaded magazines and a target sheet containing protected information. The items were stolen. They were later recovered by local police. The Force opened a *Code of Conduct* investigation into whether the Appellant: mishandled Force weapons, contrary to section 4.6 of the *Code of Conduct* (Allegation 1); and failed to safeguard protected information, contrary to section 9.1 of the *Code of Conduct* (Allegation 2). The Force and local police also launched independent statutory investigations into the Appellant's actions.

The Appellant was ordered temporarily reassigned to administrative duty for the duration of the *Code of Conduct* process, which lasted around six months. She felt this measure was "punitive" and "isolat[ing]" because it lasted longer than it needed to and caused her to miss opportunities.

Following the Conduct Meeting, the Respondent decided that both allegations were established. He ordered a forfeiture of six days' leave for Allegation 1 and forfeitures of two days' leave and two days' pay plus a direction to take a course for Allegation 2. Notably, at the Conduct Meeting and in his decision, the Respondent referred to unidentified case law involving a stolen RCMP weapon that was used in a criminal offence. On appeal, the Appellant urged that: i) the length of the conduct process and her temporary reassignment were procedurally unfair; ii) the Respondent discussed unidentified case law at the Conduct Meeting and in his decision that she lacked enough information to address; and iii) the conduct measures she received were too severe.

ERC Findings: The ERC did not find merit in the Appellant's positions. First, nothing about the length of the conduct proceeding or temporary reassignment was inordinate or oppressive. The Conduct Authority had a year to impose conduct measures on the Appellant after learning of her identity and alleged violations. That time limit was respected. Moreover, the RCMP did a good job completing the *Code of Conduct* process as quickly as it did. The Appellant's behaviour was serious. It resulted in two police forces conducting three separate investigations. The Appellant remained employed at all times, albeit in roles she found limited and tedious. Although this may have been hard for her, it was not procedurally unfair, punitive or otherwise inappropriate in the circumstances. Second, the Respondent did not reference unidentified case law in the decision

for the purpose of bolstering a conduct measure. He referred to it to impress upon the Appellant how perilous it is to leave a loaded weapon unsecured and how fortunate it was that nobody was hurt or killed as a result of her misconduct. If the Appellant believed during the Conduct Meeting that the Respondent was basing a conduct measure on case law with which she was unfamiliar, she could have objected and sought copies of the case law to review and address, or even asked for an adjournment. Third, the Respondent applied the correct test for determining conduct measures. His reasons for imposing the conduct measures he ordered were clear, considered and consistent with principles set forth in the RCMP's Conduct Measures Guide.

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:

In August 2019, the Appellant was on duty conducting an operation with other RCMP members. Her RCMP vehicle which did not contain a lockbox was left unattended overnight in a parkade. The Appellant chose to store her loaded pistol in a backpack, which was then left under a seat in the vehicle. The next morning, the Appellant noticed that one of the vehicle's windows was broken and the vehicle had been broken into. The backpack containing the loaded RCMP pistol had been stolen, along with three loaded magazines, a baton, handcuffs and keys. A target sheet containing personal information about a suspect in an ongoing operation was also stolen. The Appellant promptly reported the loss of the items to her superior. An investigation by the municipal police service of jurisdiction ensued. A statutory investigation into the Appellant's actions was also commenced. Eventually, the stolen items were recovered and the individual responsible was arrested.

A *Code of Conduc*t investigation was initiated. The original Conduct Authority was later succeeded by a superior, and eventually, by the Respondent. 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 secure weapons, contrary to section 4.6 of the *Code of Conduct* (Allegation 1), and mishandled protected information, contrary to section 9.1 of the *Code of Conduct* (Allegation 2). As conduct measures, the Respondent imposed a forfeiture of six days' leave for Allegation 1, and forfeitures of two days' leave and two days' pay, as well as a direction to the Appellant to complete a security awareness course, for Allegation 2. The Appellant appealed the conduct measures.

The case was referred to the ERC for a review. The ERC recommended that the appeal be denied. The Conduct Appeal Adjudicator agreed, finding that the conduct measures imposed were not procedurally unfair or clearly unreasonable.

The Conduct Appeal Adjudicator dismissed the appeal and confirmed the conduct measures imposed by the Respondent.

Other Appeals

NC-057 – Harassment

Constable X filed a grievance against Sergeant Y in 2013. As part of that grievance, Constable X sent the Office for the Coordination of Grievances (OCG) an email in which she made comments perceived as harassing by Sergeant Y. Consequently, Sergeant Y, who was on medical leave, asked the Appellant to file a harassment complaint on his behalf against Constable X.

The complaint was submitted to the Office for the Coordination of Grievances and Appeals (OCGA) on November 28, 2016. On January 19, 2017, the Respondent dismissed the complaint on the ground that it should have been dealt with as part of the grievance process. In support of his position, the Respondent relied on the grievance policy in effect at the time, the Administration Manual (AM), Chapter II.38 “Grievances” (AM II.38), which stated that “the level considering a grievance shall decide all matters relating to it” (section 13).

ERC Findings: Since the new *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, took effect in November 2014, all harassment complaints must be dealt with as per the current harassment policy, meaning the AM, Chapter XII.8 “Investigation and Resolution of Harassment Complaints” (AM XII.8). In the case at hand, since the complaint was filed in 2016, the latter should have by default been dealt with as per AM XII.8. The Respondent therefore erred in applying AM II.38 under the circumstances, and the decision under appeal is consequently based on an error of law.

ERC Recommendation: 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:

[*Translation*]

Constable X filed a grievance against the Appellant in November 2013, which was deemed unfounded in March 2016. A few months later, in September 2016, Constable X sent an email to the OCG and a third party about the complaint proceedings containing comments about the Appellant, which the Appellant perceived as harassing. On November 28, 2016, the Appellant, through his representative, filed a harassment complaint against Constable X for the statements contained in that email.

On January 19, 2017, the Respondent decided to dismiss the Appellant’s harassment complaint on the grounds that it should have been addressed in the grievance proceeding involving Constable X, since the grievance policy in effect at the time in Chapter II.38 of the Administration Manual (AM) stated that “the level considering a grievance shall decide all matters relating to it.” The Appellant is appealing this decision.

The Adjudicator shares the ERC’s view that the decision under appeal is based on an error of law and accepts its recommendation to allow the appeal. However, the Adjudicator finds that, given the amount of time that has passed, the fact that Constable X no longer works for the RCMP and the prima facie conduct decision rendered against Constable X concerning allegations related to this case, no further action is possible in this litigation. The Adjudicator offers his sincerest apologies to the Appellant for the RCMP’s failure to address his harassment complaint in accordance with Chapter XII.8 of the AM.

Former Legislation Cases:

Grievances

G-702 – Time Limits

The Grievor grieved a decision made by the Health Services Officer (HSO) (Respondent) on January 7, 2011, that in accordance with Force policy, he would be non-operational for five years because of his medical condition.

The Grievor contacted the SRR program in February 2011 and was told that he had missed the 30-day time limit to file a grievance. In May 2011, the Grievor filed a complaint with the Canadian Human Rights Commission (CHRC). In January 2012, the Grievor spoke to another SRR who did not assist him. In May 2012, the CHRC informed the Grievor that he could request a time extension to file his grievance with the RCMP. In May, June and July 2012, he again contacted the SRR program who did not assist him with his grievance. In August 2012, the CHRC informed the Grievor that it would not entertain his complaint as he had not exhausted the RCMP's internal grievance process. In August and September 2012, the Grievor again contacted the SRR program who did not provide assistance with the grievance. In October 2012, the RCMP Human Rights Unit informed the Grievor that the grievance process was still open to him and that he would need to request an extension of the statutory time limit. The Grievor filed his grievance on December 21, 2012.

The Level I Adjudicator denied the grievance on the basis that it was not filed within the 30-day statutory time limit for doing so at Level I and a retroactive extension of the time limit was not warranted. The Grievor submitted the matter at Level II where the sole issue was the timeliness of the grievance.

The Grievor acknowledged that the grievance was not timely, but argued that a retroactive extension was warranted in his case. He addressed the four-factor test set out by the Federal Court in *Canada (Attorney General) v. Pentney*, 2008 FC 96, for determining whether to grant an extension of time to commence a proceeding before an administrative tribunal.

ERC Findings: The ERC found that the Grievor did not meet the *Pentney* criteria. Between the aggrieved date in January 2011 and the date that the Grievor filed his grievance 23 months later in December 2012, he made numerous enquiries and attempts to receive assistance with filing a grievance. The ERC found that the Grievor exhibited intermittent intention, but not a continuing intention to pursue his grievance. The ERC further found that the Grievor did not provide a reasonable explanation for the delay in filing his grievance. The ERC noted that the Grievor provided no explanation for his delay within the 30 day statutory time limit following the January 7, 2011 aggrieved date. The ERC noted that between May 2012, when the CHRC informed him that he could seek a retroactive extension of time, and October 2012, he made several contacts with the SRR program, but he was unsuccessful in obtaining assistance to file his grievance. On October 31, 2012, the RCMP Human Rights Unit informed him that he could request a retroactive extension. Yet, he did not file his grievance until December 21, 2012, approximately 51 days later. The ERC found that to grant an extension in these circumstances would be prejudicial because it would introduce significant uncertainty into the Force's grievance process and would compromise the finality of the process and its integrity.

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

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

The Health Services Officer advised the Grievor on January 7, 2011, that he was designated as

non-operational due to his medical condition. The Grievor challenged the decision on the basis that the RCMP policy does not accurately relate to his medical condition. The Grievor made some effort to seek assistance from Staff Relations Representatives without success and filed a complaint with the Canadian Human Rights Commission. Subsequently, the Grievor filed his grievance on December 21, 2012, and sought an extension. The Level I Adjudicator found the grievance lacked timeliness and did not meet the requirements for an extension. The grievance was referred to the ERC and the Grievor requested that the matter be held in abeyance. The ERC refused the Grievor's request to hold the grievance in further abeyance, found the grievance was not timely, that an extension was not appropriate in the circumstances, and recommended the grievance be denied. The Commissioner agreed with the findings and recommendations of the ERC and dismissed the grievance.

G-703 – Time Limits

On January 7, 2011, the Health Services Officer (HSO) (Respondent) informed the Grievor that in accordance with Force policy, he would be non-operational for five years because of his medical condition. After reviewing that policy, the Grievor read it to mean that he would be permanently non-operational while he required medication to control that medical condition. In this grievance, the Grievor challenged the medication issue.

The Grievor contacted the SRR program in February 2011 and was told that he had missed the 30-day time limit to file a grievance. In May 2011, the Grievor filed a complaint with the Canadian Human Rights Commission (CHRC). In January 2012, the Grievor spoke to another SRR who did not assist him. In May 2012, the CHRC informed the Grievor that he could request a time extension to file his grievance with the RCMP. In May 2012, he again contacted the SRR program who informed him that he could not grieve an RCMP policy. In June and July 2012, he again contacted the SRR program who did not assist him with his grievance. In August 2012, the CHRC informed the Grievor that it would not entertain his complaint as he had not exhausted the RCMP's internal grievance process. In August and September 2012, the Grievor again contacted the SRR program who did not provide assistance with the grievance. In October 2012, the RCMP Human Rights Unit informed the Grievor that the grievance process was still open to him and that he would need to request an extension of the statutory time limit. The Grievor filed his grievance on December 21, 2012.

The Level I Adjudicator denied the grievance on the basis that it was not filed within the 30-day statutory time limit for doing so at Level I and a retroactive extension of the time limit was not warranted. The Grievor submitted the matter at Level II where the sole issue was the timeliness of the grievance.

The Grievor acknowledged that the grievance was not timely, but argued that a retroactive extension was warranted in his case. He addressed the four-factor test set out by the Federal Court in *Canada (Attorney General) v. Pentney*, 2008 FC 96, for determining whether to grant an extension of time to commence a proceeding before an administrative tribunal.

ERC Findings: The ERC found that the aggrieved date for this grievance was January 7, 2011, which is the date that the HSO brought the Force policy to the Grievor's attention. The ERC found that the Grievor did not meet the *Pentney* criteria. Between the aggrieved date in January 2011 and the date that the Grievor filed his grievance 23 months later in December 2012, he made numerous enquiries and attempts to receive assistance with filing a grievance. The ERC found that the Grievor exhibited intermittent intention, but not a continuing intention to pursue his grievance. The ERC further found that the Grievor did not provide a

reasonable explanation for the delay in filing his grievance. The ERC noted that the Grievor provided no explanation for his delay within the 30 day statutory time limit following the January 7, 2011 aggrieved date. The ERC noted that between May 2012, when the CHRC informed him that he could seek a retroactive extension of time, and October 2012, he made several contacts with the SRR program but was unsuccessful in obtaining assistance to file his grievance. On October 31, 2012, the RCMP Human Rights Unit in Ottawa informed him that he could request a retroactive extension. Yet, he did not file his grievance until December 21, 2012, approximately 51 days later. The ERC found that to grant an extension in these circumstances would be prejudicial because it would introduce significant uncertainty into the Force's grievance process and would compromise the finality of the process and its integrity.

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

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

The Health Services Officer advised the Grievor on January 7, 2011 that he was designated as non-operational due to his medical condition. The Grievor later learned any member requiring medication to control his medical condition will remain non-operational. The Grievor sought assistance from Staff Relations Representatives without success and filed a complaint with the Canadian Human Rights Commission. Subsequently, the Grievor filed his grievance on December 21, 2012, and sought an extension. The Level I Adjudicator found the grievance lacked timeliness and did not meet the requirements for an extension. The grievance was referred to the ERC and the Grievor requested that the matter be held in abeyance. The ERC refused the Grievor's request to hold the grievance in further abeyance, found the grievance was not timely, that an extension was not appropriate in the circumstances, and recommended the grievance be denied. The Commissioner agreed with the findings and recommendations of the ERC and dismissed the grievance.

G-704 – Discrimination

The Grievor was hired permanently in 2000 after having worked as a temporary civilian member for two years. At the time of her permanent engagement, she questioned why her starting salary was not higher than the minimum pay grade for her classification. Despite being unsatisfied with her Manager's response, the Grievor signed her letter of offer thereby accepting the terms of engagement. Some three years later, she is made aware that two of her colleagues who were hired in 2002, both men, received higher starting salaries. Not satisfied with the Force's response when asked for justification, the Grievor filed the present grievance alleging gender discrimination in salary determination. The Grievor's complaint eventually ended up before the Commissioner who recommended that the Parties request the assistance of a subject-matter expert (SME) on employment equity. Seven years later, a SME Committee concluded that the Grievor was treated in accordance with the *Canadian Human Rights Act* and the *Equal Wages Guidelines, 1986*.

ERC Findings: The ERC addressed several preliminary issues. It then reviewed the relevant pay equity test and authorities. It ultimately held the Grievor did not show on a balance of probabilities that the difference in wages between her and her two male colleagues resulted from discriminatory practice on the part of the RCMP. In reaching this conclusion, the ERC awarded a high degree of deference to the SME Committee's report. More specifically, it agreed with the Committee that rates of pay in the federal government are not determined by gender and that negotiations at time of engagement generally explain differences in wages between employees

of the same classification and level.

ERC Recommendation: The ERC recommended that the Commissioner of the RCMP deny the grievance.

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

The Grievor filed a grievance after her request for a retroactive increase in pay was declined. The request arose after she learned that two male colleagues in the Division were hired at her classification, but at a higher pay level for the same job. The Grievor complained that in paying the new employees a salary over the minimum level of engagement, the Force engaged in gender discrimination, as she was more qualified upon her entry to the RCMP two years earlier and did not receive the same privilege. The Respondent raised the issue of standing. A Level I Adjudicator denied the grievance on timeliness. At Level II, the then Commissioner determined the Grievor had standing, the grievance was timely, and ordered a Subject Matter Expert (SME) report be prepared to determine whether the inequities in pay resulted from gender discrimination under the *Equal Wages Guidelines, 1986*, as well as, the disclosure of the Above Minimum Engagements Rates of Pay for civilian members (Form 2598) used to justify the starting salaries of the two males. After much delay, including a reorganization of the sector, several successive Respondents and further directions by Level I Adjudicators, both Form 2598 were disclosed and an SME report was arranged by the final Respondent. The SME report concluded there was no gender discrimination. The Level I Adjudicator and the ERC deferred to the SME report and the ERC recommended the Commissioner deny the grievance. The Commissioner apologized to the Grievor for the delay, accepted the ERC findings and recommendation, and denied the grievance.

G-705 – Relocation

The Grievor was posted at a Detachment. In 2007, a new detachment was built. On April 5, 2007, the Grievor was transferred from the old detachment to the new detachment. His transfer form (A22-A) qualified the transfer as being a "no cost" transfer which meant that relocation benefits were not provided because the Grievor's residence was situated less than 40 kilometres from the new detachment. At the time, the Grievor did not challenge this determination. On September 20, 2007, the Grievor learned that a Public Service employee (PSE) from his detachment and who resided near him was being considered for a transfer allowance (the PSE ultimately received the benefit).

On September 27, 2007, the Grievor filed a grievance arguing that he was entitled to a transfer allowance under the National Joint Council Integrated Relocation Program Directive (IRPD). In his submissions, he emphasized that the IRPD does not define "shortest usual public route" and consequently, since the PSE's itinerary was accepted by the Force and is one that he can also follow, this route should be considered as being the "shortest usual public route" between the area where both the Grievor and the PSE resided and the new detachment.

ERC Findings: The ERC addressed several preliminary issues. It then reviewed the relevant sections of the IRPD. It ultimately held the Grievor did not show on a balance of probabilities that he was entitled to a transfer allowance. More specifically, the ERC determined that the Respondent's proposed route was clearly shorter than the Grievor's chosen route and as a result, and in accordance with the IRPD, the Respondent's route was to be relied upon when calculating the distance between the Grievor's residence and the new detachment. The ERC

also rejected the Greivor's arguments that the distance between two locations should be based on the employee's preferred route and/or on the route which takes the least amount of time. Finally, contrary to the Grievor's contention, the ERC found that there was no error of process during the resolution of the grievance.

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

G-706 – Relocation

The Grievor owned a house at her posting location. Her partner moved in with her in November 2010. In April 2011, the Grievor was notified of her transfer to another location. In June 2011, as part of the Grievor's relocation, she purchased a home at the new location with her partner, her share of the property amounting to 50%. Although the full expenses for the purchase of the new home were initially approved and reimbursed, the Grievor was later asked to repay her partner's share of those expenses. This is because under section 5.09 of the *RCMP Integrated Relocation Program* (IRP), only a portion of purchase expenses directly proportional to the member's legal share of the residence can be claimed if it is co-owned by a person who is not the member's common law spouse. The term "common law spouse" is defined in the IRP as someone who has continuously resided with the member in a conjugal relationship for at least one year prior to the transfer. The Grievor's partner did not meet this requirement.

The Grievor grieved the Force's request that her partner's portion of expenses be repaid. She claimed that she had been fully transparent with relocation personnel regarding her cohabitation situation. As a result of discussions with relocation personnel, she had purchased the home believing all expenses would be paid even though her partner had not lived with her for a full year prior to the relocation. The Grievor also argued that a Form she was required to fill out to report changes in cohabitation rendered the situation more confusing, and that she might have been entitled to the full expenses had it been filled out differently. She further asserted that she would incur financial hardship if forced to repay the amount. A Level I Adjudicator found that the expenses sought by the Grievor could only be paid if her partner was a common law spouse as defined in the IRP. Because this was not the case, the grievance was denied.

ERC Findings: The ERC found that the Grievor was not entitled to the full reimbursement of expenses related to the purchase of the residence since it was co-owned by a person who was not the Grievor's common law spouse within the meaning of the IRP. While unfortunate that the Grievor may have been misinformed by relocation personnel, the provision of inaccurate information on its own did not make the Grievor eligible for a claim to which she was not otherwise entitled, nor did it negate her duty to familiarize herself with the IRP's provisions. The fact that the Grievor may have received incorrect information, and the financial hardship imposed by having to repay the amount, did not amount to exceptional circumstances warranting a departure from the strict application of the IRP's clear provisions.

The ERC also addressed the Grievor's argument that she would have had common-law status with her partner had she confirmed it on a standard RCMP personnel information Form prior to her transfer. The ERC disagreed. Even if the Grievor had indicated on the Form that she had begun a common law relationship with her partner in November 2010, this would not have created a common law relationship for the purpose of applying the IRPs provisions, as these clearly required one year of cohabitation prior to the transfer in April 2011.

ERC Recommendation: The ERC recommends that the Commissioner deny the grievance. The ERC also recommends that the Commissioner extend an apology to the Grievor, as she may

have been given misleading information during the relocation process and was paid a significant sum in error.

G-707 – Private Accommodation Allowance

The Grievor volunteered to travel to an isolated post to help conduct an investigation. He stayed at the isolated post for five nights in a vacant, Crown-owned house trailer that he felt was substandard. He filed a claim for a Private Accommodation Allowance (PAA) totalling $250 (five nights at $50 per night) and other costs. The Force refused to pay the PAA portion of the claim. The Grievor presented a grievance, which a Level I Adjudicator denied on the merits. She found that he was ineligible to receive a PAA because the house trailer he stayed in was not a private accommodation, and PAAs were not meant to be compensation for lodgings that are considered subpar.

The Grievor resubmitted his grievance at Level II. He relied, for the first time, on a Briefing Note and a Bulletin that predated the Level I decision by months. He explained that those documents showed that the then Commissioner wished to revise Force policy for the purpose of broadening member eligibility to the PAA, retroactive to a date that preceded his trip.

ERC Findings: The ERC found that there were no preliminary issues that prohibited a review of the grievance. However, the new documents the Grievor supplied at Level II were inadmissible. They were available during the Level I process, but the Grievor did not reasonably explain why he could not have offered them as evidence then. In any event, the evidence could not help the Grievor because the Force ultimately did not amend policy to further widen eligibility to the PAA.

In regards to the merits, the ERC found that the Grievor could have been eligible to receive a PAA only if the house trailer at which he stayed was a “private non-commercial accommodation” (i.e. “private dwelling or non-commercial facilities where the traveller does not normally reside”).

The Grievor was ineligible to receive the PAA because the house trailer did not fall into this category. It fell within the category of “government and institutional accommodation”, as described in both the National Joint Council Travel Directive and the RCMP Travel Directive. The property was Crown-owned and was not being rented by anybody. This removed any private character it may have otherwise had. Moreover, the Grievor did not tender evidence that he could receive a PAA based on a justified exception authorized for program-related reasons. Lastly, the purpose of a PAA was not to reimburse members for what they believed were unsuitable accommodations.

The ERC thanked the Grievor for agreeing to help with a serious matter at an isolated post, and for demonstrating tolerance and professionalism while he stayed there.

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

G-708 – Private Accommodation Allowance

The Grievor agreed to travel to a short-staffed detachment to perform relief work. Before she travelled, her superior told her she could receive a Private Accommodation Allowance (PAA) upon her return. She spent 14 nights at the detachment and stayed in a vacant, Crown-owned residence that she considered subpar. She later made a claim for a PAA totalling $700 (14 nights at $50 per night) and other travel expenses. Her superior advised her that, although he initially thought she could receive a PAA, he since learned he was mistaken. He apologized and asked

her to resubmit her travel claim without the request for a PAA. The Grievor did so.

The Grievor filed a grievance which a Level I Adjudicator denied on its merits. The Adjudicator found that the Grievor was ineligible to receive a PAA because the residence she stayed in was not a private accommodation, and PAAs were not meant to be compensation for properties that were deemed subpar. However, the Adjudicator agreed that the residence was inadequate and recommended that the RCMP take steps to ensure its relief workers stayed in suitable lodgings.

The Grievor resubmitted her grievance at Level II.

ERC Findings: The ERC found that there were no preliminary issues that prohibited a review of the grievance. It further found that the Grievor could have been eligible to receive a PAA only if the residence at which she stayed was a "private non-commercial accommodation" (i.e. "private dwelling or non-commercial facilities where the traveller does not normally reside"). The Grievor was ineligible to receive the PAA because the residence did not fall into this category. It fell into the category of "government and institutional accommodation" as described in both the National Joint Council Travel Directive (NJCTD) and RCMP Travel Directive. The residence was Crown-owned and was not being rented by anyone. This removed any private character it may have otherwise had. The Grievor also did not offer evidence that she could receive a PAA based on a justified exception authorized for program-related reasons. The purpose of a PAA was not to reimburse members for what they felt were subpar accommodations. There was no authority under the NJCTD or RCMP Travel Directive for the Grievor to receive a PAA in this situation. Although her superior originally believed the Grievor could receive a PAA, expenses resulting from mistakes are not a basis for reimbursement.

The ERC supported the Level I Adjudicator's suggestion that that the RCMP review its accommodations and ensure they are suitable for relief workers. It expressed hope that the suggestion was accepted and recommended that it be followed on an ongoing basis.

The ERC thanked the Grievor for agreeing to perform relief work at a short-staffed detachment, and for demonstrating tolerance and professionalism while she stayed there

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

G-709 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During her time there, she stayed in a double-occupancy room. After her deployment, she claimed the private non-commercial accommodation allowance (PAA) as compensation for her stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present her grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of her shared accommodation. Since the Grievor was aware of the prejudice from the moment she arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny her the PAA. Since the Grievor submitted her grievance within 30 days after the day on which she learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-710 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-711 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the

grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-712 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-713 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-714 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During her time there, she stayed in a double-occupancy room. After her deployment, she claimed the private non-commercial accommodation allowance (PAA) as compensation for her stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present her grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of her shared accommodation. Since the Grievor was aware of the prejudice from the moment she arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny her the PAA. Since the Grievor submitted her grievance within 30 days after the day on which she learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-715 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-

commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-716 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-717 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-718 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

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

recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-719 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During her time there, she stayed in a double occupancy room. After her deployment, she claimed the private non-commercial accommodation allowance (PAA) as compensation for her stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment she arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny her the PAA. Since the Grievor submitted her grievance within 30 days after the day on which she learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-720 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on

which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-721 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-722 – Private Accommodation Allowance

The Grievor was deployed to an event, from February 12 to 28, 2010. During his time there, he stayed in a double occupancy room. After his deployment, he claimed the private non-commercial accommodation allowance (PAA) as compensation for his stay in the double occupancy room. The Respondent denied the claim, and the Grievor filed a grievance in response.

During the Early Resolution phase, the Respondent requested that a Level I Adjudicator rule on whether the Grievor had met the statutory time limit to present his grievance at Level I.

The grievance was denied at Level I. The Adjudicator determined that the subject of the grievance was the prejudice that the Grievor claimed to have suffered as a result of his shared accommodation. Since the Grievor was aware of the prejudice from the moment he arrived at the event, the Adjudicator found that the grievance had been submitted well after the 30-day

statutory time limit.

ERC Findings: The Grievor's grievance challenges the Respondent's independent decision to deny him the PAA. Since the Grievor submitted his grievance within 30 days after the day on which he learned of this decision, it follows that the time limit set out in paragraph 31(2)(a) of the *RCMP Act* was met.

ERC Recommendation: The ERC recommends that the grievance be allowed. It also recommends that the Commissioner rule on the merits of the grievance rather than referring it to Level I. As such, submissions on the substantive issues should be exchanged immediately at Level II.

G-723 – Private Accommodation Allowance

The Grievor agreed to travel to an isolated post to perform relief work. He spent 28 nights at the isolated post. He stayed in an apartment inside the RCMP detachment there. In his view, that apartment was unsuitable because it was noisy and lacked privacy. He presented a claim for a Private Accommodation Allowance (PAA) totalling $1,400 (28 nights at $50 per night). The Respondent would not approve his claim. The Grievor filed a grievance. A Level I Adjudicator denied it on the merits. She found that a PAA was not meant to be compensation for "less than ideal" lodgings provided at no cost, and that the Respondent lacked authority to approve a PAA.

The Grievor resubmitted his grievance at Level II. Throughout the grievance process, he urged that the Commissioner had made a Force-wide decision that could entitle him to a PAA. He explained that, according to the decision, members who stayed in Crown-owned housing rented by other members were eligible to receive a PAA, retroactive to a date that preceded his trip.

ERC Findings: The ERC found that there were no preliminary issues that prohibited a review of the grievance. It further found that the Grievor could have been eligible to receive a PAA only if the apartment at which he stayed was a "private non-commercial accommodation" (i.e. "private dwelling or non-commercial facilities where the traveller does not normally reside"). The Grievor was ineligible to receive the PAA because the apartment did not fall into this category. Rather, it fell into the category of "government and institutional accommodation" as described in both the National Joint Council Travel Directive (NJCTD) and the RCMP Travel Directive. The apartment was located inside an RCMP detachment, seemingly fell within the definition of "police quarters" and was otherwise a model example of a facility "owned, controlled, authorized or arranged by the Crown". The ERC accepted that, following a decision by the Commissioner, the RCMP amended its Travel Directive to retroactively broaden eligibility to the PAA to members who had stayed in rented Crown-owned housing in isolated communities. This amendment made sense. A Crown-owned accommodation can have a private character if it is being, or is about to be, rented on a more permanent basis. However, an unrented Crown apartment inside an RCMP detachment does not have a private character. It cannot properly be considered a private non-commercial accommodation. The Respondent otherwise lacked authority to approve a PAA.

The ERC thanked the Grievor for agreeing to perform relief work at an isolated post, and for demonstrating tolerance and professionalism while he stayed there.

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

G-724 – Discrimination

The Grievor was a regular member. He submitted a claim for pre-approval of significant medical expenses, which would be performed on his spouse, and for a less costly, which would be performed on him. He was reimbursed by the Force for the treatments performed on him. RCMP Health Services later informed the Grievor that the RCMP would not cover his spouse's expenses because she was not a member.

The Grievor argued that he should be entitled to reimbursement for that which would be paid to a female member. He relied in part on Human Rights Legislation and what he referred to as a "pay equity" *Charter* argument. The Respondent argued that there was no authority to reimburse the treatment for the Grievor's spouse because she is not a member. The Level I Adjudicator denied the grievance on its merits. She found that the RCMP had complied with its *Health Care Entitlements and Benefits Programs* policy (AM XIV.1) and that its decision was not discriminatory.

ERC Findings: The ERC found that the RCMP's decision was consistent with AM XIV.1, which authorized reimbursement of members for their own infertility treatments, but not for their spouses' treatments.

The ERC further found that the decision was not discriminatory. In a case involving comparable facts, the Federal Court found that that the biological reality is that there are different treatments for males and females, and that it was "neither here nor there" if a female's treatment was more costly than a male's treatment, since one cannot claim discrimination because a particular treatment costs more than another. The ERC relied on Supreme Court of Canada jurisprudence which provides that the concept of substantive equality does not necessarily mean identical treatment, and found that the dollar figure reimbursed was irrelevant. What was relevant was the fact that AM XVI.1 entitled both male and female members to coverage for their treatments. Finally, the ERC pointed out that although the Grievor's spouse may have been covered had they lived in Quebec, this was due to Quebec's provincial health care plan, not to RCMP policy or federal legislation. The ERC found that a member's place of residence is not a prohibited ground of discrimination.

The ERC expressed disappointment that the outcome could not be different, but observed that the RCMP had followed its own policy and the law.

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

G-725 – Meal Allowance

On the relevant dates, the Grievor was working evening shifts outside his headquarters area. He claimed a reimbursement for three meals at the dinner rate. In each case, it was the first meal of his shift. The Grievor's claim was denied by the Respondent on the ground that the Grievor had not provided receipts to justify the reimbursement requested.
The grievance was denied at Level I. According to the Adjudicator, the Grievor was subject to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD), which states that reimbursement of meals shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift. On that issue, the Adjudicator noted that for shift workers outside their headquarters area, the meal they are authorized to claim at mid-shift is lunch.

ERC Findings: The ERC found that the Grievor, as a shift worker, had to have breakfast at his own expense before beginning his shifts. He was then eligible to claim the reimbursement of the meals consumed while he was travelling, in accordance with the meal sequence set out in section 3.2.9 of the TBTD. During each of his shifts, he was therefore eligible for a meal at the lunch rate. If an amount greater than the allowed rate was paid, the Grievor had to provide supporting documents in order to receive the actual expenditure.

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

G-726 – Meal Allowance

Between October 2003 and November 2005, the Grievor regularly worked evening shifts outside his headquarters area. While travelling, the Grievor claimed and obtained the reimbursement of meals consumed at mid-shift at the lunch rate. However, further to new information, he requested that the meals already reimbursed at the lunch rate be paid at the dinner rate. He therefore claimed the difference between the amount received and the amount he should have received for 125 meals. The Respondent refused on the ground that the Grievor was entitled to a reimbursement of his meals at the lunch rate pursuant to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD). The Respondent indicated that if the Grievor had paid a higher amount for his meal, he had to provide supporting documents.

The Level I Adjudicator denied the grievance because according to section 3.2.9 of the TBTD, the Grievor could have his mid-shift meals reimbursed, but based on the sequence of breakfast, lunch and dinner. According to the Level I Adjudicator, the Grievor's mid-shift meal during his evening shifts was therefore the equivalent of lunch. Since the Grievor had already collected the amount to which he was eligible, the Adjudicator denied the grievance.

ERC Findings: The ERC found that the TBTD clearly indicated that shift workers should be reimbursed based on the meal sequence of breakfast, lunch and dinner, regardless of the shift's commencement. The ERC concluded that under section 3.2.9 of the TBTD, the meal sequence of breakfast, lunch and dinner was to apply to shift workers' shifts regardless of the shift. The Grievor was therefore eligible for the reimbursement of his meals at the lunch rate.

However, the ERC found that when the Grievor had worked a shift longer than 10 hours, he was eligible for the reimbursement of a second meal at the dinner rate according to the sequence established in the TBTD.

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

G-727 – Meal Allowance

On November 6, 7, and 17, 2008, the Grievor was conducting active surveillance outside his headquarters area. On November 6 and 17, he worked evening shifts (1:30 p.m. to 11:30 p.m.) while on November 7, he worked a day shift that lasted more than 16 hours (7:00 a.m. to 11:30 p.m.). He claimed the reimbursement of three meals at the dinner rate. The Respondent dismissed the Grievor's claim on the ground that the Grievor did not provide receipts to justify the reimbursement claimed.

The grievance was denied at Level I. According to the Adjudicator, the Grievor was subject to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD) which states that reimbursement of meals shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the

commencement of the employee's shift. On that issue, the Adjudicator noted that for shift workers outside their headquarters area, the meal they are authorized to claim at mid-shift is lunch.

ERC Findings: The ERC found that the Grievor, as a shift worker, had to have his breakfast at his own expense before beginning his shifts. He was then eligible to claim the reimbursement of meals consumed during his travels, in accordance with the meal sequence set out in section 3.2.9 of the TBTD. During each of his shifts, he was therefore eligible to claim a meal at the lunch rate. As for the November 7 shift, the Grievor was also eligible to claim a second meal, this time at the dinner rate. If an amount greater than the allowed rate were paid, the Grievor had to present supporting documents in order to receive the actual expenditure.

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

G-728 – Meal Allowance

On February 10, 2010, the Grievor submitted a form for duty travel fees containing claims for meals during several shifts. One of these claims was for the reimbursement of fees incurred by the Grievor on February 6, 2010, including breakfast. The Grievor was working an overtime shift from 7:30 a.m. to 8:30 p.m. On February 16, 2010, the Respondent refused to authorize the reimbursement of the breakfast, simply indicating that [*translation*] "you are not entitled to your first meal on February 6." The residual amount that was not authorized by the Respondent for breakfast was $6.89. It must be noted that the two other meals, lunch and dinner, claimed for that day were authorized.

The Level I Adjudicator denied the grievance because the Grievor was a shift worker and had to be reimbursed according to the meal sequence set out in section 3.2.9 of the *Treasury Board Travel Directive*. The Adjudicator added that shift workers were responsible for having their breakfast in preparation for their shift. Since the Grievor had already collected the amount to which he was eligible, the Adjudicator denied the grievance.

ERC Findings: The ERC found that the Grievor, as a shift worker, was eligible to be reimbursed for his meals during travel outside his headquarters area or when he worked overtime hours. However, the RCMP *Travel Policy* indicates that members must have breakfast before beginning their shift. The ERC found that, even though the Grievor worked overtime hours, he had to have breakfast at his own expense and be reimbursed for the following meals, depending on the length of his shift.

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

G-729 – Meal Allowance

On the relevant dates, the Grievor was working evening shifts outside his headquarters area. He claimed a reimbursement for three meals at the dinner rate. In each case, it was the first meal of his shift. The Grievor's claim was denied by the Respondent on the ground that the Grievor had not provided receipts to justify the reimbursement requested.
The grievance was denied at Level I. According to the Adjudicator, the Grievor was subject to section 3.2.9 of the *Treasury Board Travel Directive* (TBTD), which states that reimbursement of meals shall be based on the meal sequence of breakfast, lunch and dinner, in relation to the commencement of the employee's shift. On that issue, the Adjudicator noted that for shift workers outside their headquarters area, the meal they are authorized to claim at mid-shift is

lunch.

ERC Findings: The ERC found that the Grievor, as a shift worker, had to have breakfast at his own expense before beginning his shifts. He was then eligible to claim the reimbursement of the meals consumed while he was travelling, in accordance with the meal sequence set out in section 3.2.9 of the TBTD. During each of his shifts, he was therefore eligible for a meal at the lunch rate. If an amount greater than the allowed rate was paid, the Grievor had to provide supporting documents in order to receive the actual expenditure.

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

Commissioner of the RCMP's Final Decisions

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

Current Legislation Cases:

Conduct Appeals

C-039 Conduct Authority Decision (summarized in the July – September 2020 Communiqué)

The Appellant allegedly said an inappropriate comment. The Appellant then reportedly re-stated the comment in front of other instructors. The Appellant said that his comment was misunderstood, and the last part of his sentence was likely misunderstood by the other instructors. The Respondent imposed conduct measures which consisted of a demotion in rank for a period of one year, as well as a written reprimand. The severity of the conduct measures imposed was largely based on the "Doctrine of Cumulative Incident" which permits an employer to rely on previous misconduct to show a pattern of behaviour and that the employee has not learned from his mistakes. With respect to the conduct measures, the Appellant argued that the demotion was disproportionate in relation to the *Conduct Measures Guide* and the Doctrine was not applicable as the prior misconduct was not recent. The ERC disagreed and found that the Doctrine was applicable. 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:

On January 17, 2017, the Appellant was an instructor at a course. One of the candidates, Cst. X, was talking to the Appellant. In reply, the Appellant was alleged to have made one of two comments. A fellow instructor and supervisor who was nearby, alleged he clearly heard the Appellant state a different comment.

An informal inquiry was conducted the next day. No candidates recalled any inappropriate behaviour, including Cst. X who stated she and the Appellant were friends and she was not offended. The course coordinator, who was in charge of the informal inquiry, recalled the Appellant laughing. Another member of the instructor team stated he had a "vague recollection" of the Appellant repeating the comment he had made to Cst. X, when he approached the instructors and was in disbelief that someone would make such a comment.

A *Code of Conduct* investigation was ordered and an investigation report issued. Following two conduct meetings, the first in which the Appellant made lengthy submissions through counsel and the second, which followed a supplementary investigation report, the Respondent found, on a balance of probabilities, that the Appellant had made the discourteous comment, contrary to section 2.1 of the *Code of Conduct*.

As conduct measures, the Respondent imposed a demotion for a period of one year and a written reprimand. Although the severity of the conduct measures was outside of the recommended range in the Conduct Measures Guide, it was based on the "Doctrine of Cumulative Incident" which allows an employer to rely on previous misconduct that demonstrates a pattern of behaviour and that the employee has not learned from their mistakes. The Respondent considered the Appellant's history of prior misconduct for inappropriate comments, for which the last sanction consisted of a forfeiture of ten days' pay, the maximum penalty short of dismissal at the time.

The Appellant challenged the Respondent's decision. The case was referred to the ERC. The ERC found no grounds on which to overturn the decision and recommended the appeal be dismissed. The Conduct Appeal Adjudicator agreed. The appeal was dismissed.

C-040 Conduct Board Decision (*summarized in the July – September 2020* Communiqué)

Following a conduct hearing, a Conduct Board concluded that two allegations against the Appellant had been established, which contravened section 7.1 of the RCMP *Code of Conduct*. As a conduct measure, the Board ordered the Appellant's dismissal from the RCMP. Based on information on his Form 6437, the Appellant claims that there was a reasonable apprehension of bias on the part of the Board and that the latter made errors in its assessment of the evidence, particularly with respect to the assessment of the credibility of certain witnesses. The ERC recommended that the appeal be dismissed.

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

The Appellant appealed a decision from an RCMP Conduct Board which found that two allegations against him contrary to section 7.1 of the *Code of Conduct* were established and ordered his dismissal. The first allegation related to his use of drugs and the second, his inappropriate use of his work cellphone. The Appellant argued that there was a reasonable apprehension of bias on the part of the Conduct Board and that it erred in assessing the evidence and the aggravating and mitigating factors.

Finding that the Appellant's claim of bias was without merit and that the Conduct Board did not make any manifest or determinative error, the Adjudicator accepted the ERC's recommendation and dismissed the appeal.

Other Appeals

NC-055 Medical Discharge (*summarized in the July – September 2020* Communiqué)

The Appellant appealed a decision of the Force that medically discharged her for reason of disability. She argued that the Force did not meet its duty to accommodate by not adequately communicating with her, not offering her accommodation options for work, and by finding her unfit for work when the latest medical certificates from her physicians indicated that she could do

non-front line work. The ERC found that, while there was not an optimal level of communication, it did not rise to the level of inadequate communication. The ERC found that it was not open to the Force to provide accommodation options for work to the Appellant once the HSO assigned a permanent G4-O6 medical profile to her. The ERC found that the Force did not meet its duty to accommodate the Appellant to the point of undue hardship. The ERC lastly found that it was not clear from the record whether the Force had provided sufficient time following the HSO's approval of treatment to determine whether the treatment would impact the Appellant's occupational prognosis. 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 was first employed by the RCMP as a Temporary Civilian Employee, and then hired as a Civilian Member on September 18, 2009. On July 16, 2016, the Appellant went off-duty sick. On June 19, 2018, discharge proceedings were initiated, and on January 8, 2019, an order to discharge was issued. The Appellant appealed the discharge decision arguing that it was clearly unreasonable on the basis that the Force failed to demonstrate she had been accommodated to the point of undue hardship. The Appeal was referred to the ERC for review. 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 the Respondent's decision to be clearly unreasonable. The appeal was allowed.

Former Legislation Cases:

Discharge and Demotion Appeals

R-007 Discharge (*summarized in the January – March 2020* Communiqué)

The Appellant displayed certain strengths as a member. However, he had significant difficulties documenting his files and keeping up with tasks related to ongoing investigations. In an attempt to improve the Appellant's performance, the Force initiated a Performance Enhancement Process (PEP), which provided the Appellant with close supervision by S/Sgt. X over several months. Despite this assistance, the Force concluded at the end of the PEP phase that the Appellant remained unable to perform his duties at a satisfactory level. He argued that the manner in which the Board had rendered its oral decision, one and a half hours after closing arguments had taken place, showed the Board had pre-judged the matter, resulting in a reasonable apprehension of bias. The ERC did not agree that the Board's actions had raised a reasonable apprehension of bias. Despite its relatively short final deliberations, the Board's actions over the course of the entire proceedings, including the last day of the hearing, supported a presumption that the Board had remained open-minded until the final submissions had been delivered and considered. The ERC further determined that the Board had committed no reviewable errors in ordering the Appellant's discharge. 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:

After graduating from Depot, the Appellant was posted to two different detachments in "X" Division from 2002 to 2007. The Appellant was transferred to another Detachment in July 2007. Although he displayed certain strengths as a member, the Appellant exhibited significant

difficulties preparing and completing paperwork, conducting investigations, and assembling evidence and testifying in court.

In an attempt to improve his performance, RCMP management initiated a Performance Enhancement Process (PEP) placing the Appellant under close supervision. Throughout the PEP, the Appellant received supervision, support, and guidance. While noting some improvement during PEP, ultimately, the Appellant was found to be unable to perform his duties at a satisfactory level, resulting in a Notice of Intent to Discharge.

A hearing before a discharge and demotion board (Board) was held and after an 11-day hearing over the course of three months, the Board rendered a decision ordering the Appellant's discharge.

The Appellant appealed the decision arguing that the Board breached the principles of procedural fairness and failed to establish the ground of unsuitability as set out in section 45.18 of the *Royal Canadian Mounted Police Act*, RSC 1985, c. R-10, as amended prior to November 28, 2014 (*RCMP Act*).

The appeal was referred to the ERC for review, pursuant to subsection 45.25(1) of the *RCMP Act*. The Chairperson of the ERC recommended that the appeal be denied. The Commissioner was not persuaded that the Board breached the principles of procedural fairness or that it erred in finding the ground of unsuitability established. The appeal was dismissed.

Disciplinary Appeals

D-137 Adjudication Board Decision (*summarized in the July – September 2020* Communiqué)

The Appellant met X. They started dating in early 2009, but had a volatile on-again, off-again relationship. They moved into an apartment together in March 2009. The record shows that X was unpredictable. In late July 2012, both the Appellant and X, who was now in another country vacationing, made plans that the Appellant would join her in that country. During the evening of August 3, 2012, the Appellant was arrested and detained by the authorities. The Appellant was charged with theft and mischief. The Appellant was convicted of the charges by the Court in the country. Upon his return to Canada, the Appellant did not inform his superior of the conviction. The Appellant's superiors became aware of the conviction and proceeded to order an investigation. An investigation was mandated and seven allegations of breaching the *Code of Conduct* were filed against the Appellant. The ERC found that the Board did not err in its assessment of the principal witnesses' credibility and applied the correct legal test. Lastly, the ERC found that the Appellant was precluded from raising the issue of the Board's alleged prejudice against him for two reasons: 1) the decision to proceed with only this matter was reached in agreement between the parties' representative before the proceedings began and 2) even if there was no agreement, the Appellant should have raised this issue before the Board. The ERC recommended that the appeal be dismissed.

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

The Appellant was an RCMP member posted to "X" Division. He met X and he started dating her in early 2009. Their relationship was toxic and destructive. They would frequently break up and get back together. X was unpredictable.

Despite ending their relationship in early 2011, the Appellant and X continued to see each other. In July 2012, the Appellant and X made plans for the Appellant to visit X. During this time, the Appellant was on sick leave. On August 3, 2012, an altercation between the Appellant and X occurred. He was arrested by authorities and was convicted of theft and mischief. X did not file assault charges against the Appellant.

When the Appellant returned to Canada, he told two of his supervisors that he had a great time. He did not notify the Force that he had been convicted. At the end of summer 2012, X returned to Canada and filed a complaint with the RCMP indicating that the Appellant had assaulted her and was charged. A *Code of Conduct* investigation was initiated and seven allegations were brought against the Appellant.

At the hearing, the Board found that Allegation 1 (destruction of property and theft), Allegation 2 (physical assault), Allegation 3 (failure to disclose criminal charges), and Allegation 6 (making a false, misleading or inaccurate statement to a superior) had been established. At the sanction hearing, the Board ordered the Appellant to resign or be dismissed. When the Appellant did not resign, he was dismissed.

The Appellant appealed the decision and challenged the Board's finding on Allegations 1 and 2. Specifically, the Appellant argued that the Board improperly assessed the evidence, failed to address contradictions, and made its own speculations and assumptions about the evidence. The Appellant also alleged that the Board disregarded his medical status at the time of the allegation, discriminated against him, was prejudiced against him, and failed to consider his performance as a member of the RCMP.

The appeal was referred to the ERC for review, pursuant to subsection 45.15(1) of the *Royal Canadian Mounted Police Act*. The Chairperson of the ERC recommended that the appeal be dismissed. The Commissioner was not persuaded that the Board made any manifest and determinative errors. The appeal was dismissed and the Board's decision confirmed.