

Communiqué – April to June 2021

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

The kinds of cases reviewed by the ERC include:

- under the current *RCMP Act* - appeals of harassment investigation decisions, decisions to discharge an RCMP member (e.g. due to disability or unsatisfactory performance), decisions to dismiss an RCMP member or to impose a financial penalty for misconduct, and decisions to suspend a member's pay and allowances when the member has been suspended from duty; and,
- under the former *RCMP Act* (i.e. for cases commenced prior to changes made to the legislation in late 2014) – disciplinary appeals and appeals of initial decisions for a range of grievance matters (e.g. harassment, medical discharge, travel, relocation or isolated post expense claims).

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

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Findings and Recommendations

Between April and June 2021, the RCMP External Review Committee (ERC) issued the following 7 findings and recommendations:

Current Legislation Cases:

Conduct Appeals

C-047 – Conduct Board Decision

Ms. X was the victim of violence from her boyfriend and the RCMP responded. The boyfriend was arrested, but released the next day on conditions and promise to appear. One of the conditions was no-contact with Ms. X. The day after the boyfriend's release, he texted Ms. X. She in turn called the RCMP and the Appellant was dispatched to her residence for a "Breach File". Ms. X showed the Appellant pictures of her injuries, while inadvertently showing him an inappropriate photo. The Appellant then showed her a "revealing" photo of himself. Over the next couple of days, Ms. X and the Appellant texted each other. The messages were sexual in nature. After two days, the Appellant texted Ms. X that they should not be texting each other and that it could jeopardize his career. Ms. X later texted the Appellant that her boyfriend had breached his conditions again, that she was scared of him and asked the Appellant to come to her apartment. The Appellant, who was off-duty, told her to get somewhere safe and call the police.

Ms. X had to appear in court regarding the charge against her ex-boyfriend. She met with Crown Counsel and told him that an RCMP Officer showed her inappropriate pictures of himself and was sending her texts that were sexual in nature. The Crown Attorney learned the Appellant's identity and complained to the Appellant's Line Officer. The charges against Ms. X's boyfriend had to be dropped because of the Appellant's actions. A *Code of Conduct* investigation was ordered against the Appellant relating to three allegations:

1. Engaging in discreditable conduct by showing Ms. X a revealing picture of himself and exchanging inappropriate sexual and personal text messages contrary to section 7.1;
2. Creating actual, apparent or potential conflicts of interest between his professional responsibilities and private interests based on inappropriate sexual and personal communications with Ms. X contrary to section 6.1; and
3. Failing to diligently perform duties and take appropriate action to aid Ms. X contrary to section 4.2.

There was no hearing and the Conduct Board (Board) refused to hear witnesses. The Appellant provided a response to the allegations admitting some of the particulars of Allegation 1, but denying Allegations 2 and 3. The Board held three pre-hearing conferences to address preliminary issues. However, it rendered a decision on the merits of the allegations while the parties were awaiting a decision on whether Ms. X would testify and whether she was a "vulnerable person". Neither party had provided submissions on the merits of the allegations. For the conduct measures phase, both parties provided submissions. The Board found that it did not need to hear witnesses because there was no conflict in the evidence. Because the Appellant admitted to showing a revealing photograph to Ms. X, the Board found Allegation 1 established. It found that Allegation 2 was a reiteration of Allegation 1 and found therefore that it was not

established. The Board found Allegation 3 established. The Board ordered the Appellant to resign or be dismissed; the Board also ordered a 15 days' forfeiture of pay.

ERC Findings: The ERC found that the Board breached the Appellant's right to procedural fairness by not holding a hearing in this case. While it found that not all cases need to proceed with an oral hearing, procedural fairness dictated that an oral hearing be held in this case. More particularly, because the Appellant had denied some allegations and the Conduct Authority Representative had raised the Appellant's credibility as an issue, the case needed to proceed by way of an oral hearing. The ERC further found that the Board breached both parties' right to procedural fairness by rendering a decision on the merits, without first inviting submissions from the parties.

ERC Recommendations: The ERC recommends that the appeal be allowed and that a new hearing be ordered into the matter.

C-048 – Conduct Board Decision

The Force (Appellant) appealed the Conduct Board's (Board) sanction decision, seeking a direction for the Respondent to resign, or his dismissal from the Force. The Respondent damaged a police vehicle, lied to his supervisor regarding his whereabouts, left his shift early, and removed a supervisor's comments from two files. While the Force was seeking the Respondent's dismissal, the Board found that all five allegations were established and imposed a reprimand, continued professional medical counselling, and a forfeiture of 10 days' pay. At the time of the incidents, the Respondent was suffering from undiagnosed, work-related, mental illnesses.

As a preliminary issue in the appeal, the Respondent challenged the retroactive extension of the one-year time limit to initiate a conduct hearing, which had been granted to the Appellant by a Director General (DG).

Regarding the merits of the appeal, the Appellant argued that the Board breached procedural fairness by refusing to allow him to call evidence regarding the damage to the police vehicle. He argued that the Board erred in accepting late evidence from the Respondent and in refusing to allow the Appellant an adjournment to respond to the late evidence. Lastly, the Appellant argued that the Board provided inadequate reasons regarding several issues.

ERC Findings: Regarding the preliminary issue, the ERC found that the DG did not err in applying the *Pentney* test for an extension of time. His retroactive extension of the one-year time limit to initiate a conduct hearing was therefore not clearly unreasonable.

Regarding the merits of the appeal, the ERC found that the Board's refusal to hear evidence regarding the damage to the police vehicle did not breach procedural fairness. The ERC found that a decision-maker can limit the scope of evidence by stipulating certain points that are not in dispute. It was unnecessary for the Board to allow the Appellant to present the proposed evidence because the Board had already found that the particular was established.

The ERC found that the Board did not err in accepting the late evidence from the Respondent. The *Commissioner's Standing Orders (Conduct)* provides the Board great latitude in directing the hearing, as long as it is in accordance with the principles of procedural fairness. The Board did not breach procedural fairness because the Appellant had ample, timely, expert evidence regarding the Respondent's mental illness to allow the Appellant to prepare for the hearing,

present any rebuttal evidence, and be fully heard on this issue. Lastly, the Board provided the Appellant the opportunity to cross-examine the witnesses and indicated that if anything was outstanding after the cross-examination that still required investigation, the Board would grant an adjournment at that time.

The ERC found that a decision-maker is not required to make an explicit finding in his or her decision with respect to every element of the case and every argument made. Further, where certain issues raised by the Appellant were addressed by the Board during the hearing, the ERC found it unnecessary for the Board to repeat his rationale in the written decision. This included the Board's refusal to allow the Appellant to call evidence regarding an allegation that had already been found to be established by the Board, and the Board's refusal to allow the Appellant an adjournment to respond to late evidence.

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

Other Appeals

NC-069 – Harassment

The Appellant filed a harassment complaint against his then supervisor (the Alleged Harasser) claiming that the latter sent him three texts that were profane. The Appellant also claimed that the Alleged Harasser made it known to other RCMP members that the Appellant was under a *Code of Conduct* investigation. Finally, the Appellant claimed that the Alleged Harasser lied to investigators in respect to that investigation.

The Respondent did not order a *Code of Conduct* investigation into the Appellant's complaint. The Respondent determined that it was unnecessary to conduct an investigation because she had all of the information required to make a decision. She found that the allegations were not established. The Respondent found that these harassment complaints were filed in retaliation for the *Code of Conduct* matter. Although she found that the expletives sent by text to the Appellant were unprofessional, all of the circumstances surrounding these texts had to be taken into consideration. She determined that the Appellant himself triggered the response of the Alleged Harasser. Although these texts did not constitute harassment, the Respondent indicated that she had addressed the Alleged Harasser's comments through performance management.

The Respondent found that, with respect to the harassment complaint that the Alleged Harasser divulged to others that there was an ongoing *Code of Conduct* investigation against the Appellant, that this complaint was in fact filed in retaliation for the Alleged Harasser's statement given to *Code of Conduct* investigators.

ERC Findings: The ERC agreed with the Respondent that there was sufficient information in the record to address all three harassment complaints and that an investigation was not warranted.

The ERC agreed with the Respondent that the contextual element was important when considering whether there was harassment. The ERC agreed with the Respondent that the Appellant played a role in the reaction, while unprofessional, of the Alleged Harasser. The ERC agreed that with respect to the texts, that no harassment took place.

In respect to the second allegation that the Alleged Harasser allegedly told other RCMP members of an ongoing *Code of Conduct* investigation against the Appellant, the ERC agreed that this specific complaint was filed as retaliation for the Alleged Harasser giving a statement to

investigators.

Finally, in relation to the third harassment complaint that the Alleged Harasser lied to *Code of Conduct* investigators, the ERC found that this allegation should be addressed in the conduct proceedings, not within a harassment complaint.

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

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

The Appellant lodged a harassment complaint against his past supervisor (Alleged Harasser) for texting him profanities, disclosing to another member that the Appellant was going to undergo a *Code of Conduct* process, and allegedly lying in the Appellant's *Code of Conduct* process.

The *Code of Conduct* against the Appellant stems from an incident he orchestrated involving a member of the public (Citizen) and the Alleged Harasser. While dealing with this Citizen, the Appellant advised her that she would be receiving an award from the Alleged Harasser. Unbeknownst to the Alleged Harasser, the Citizen showed up at a time and place set by the Appellant to receive her award from the Alleged Harasser who had to explain to the Citizen that she was not receiving an award. The Citizen became visibly upset. The Alleged Harasser texted the Appellant, who had since transferred to another Division, and reprimanded him using foul language. The Alleged Harasser later admitted his response was inappropriate and unprofessional. On the date of the incident, the Alleged Harasser advised his Inspector of the incident and considered whether to issue a Form 1004. The Citizen made a public complaint against the Appellant, which resulted in the *Code of Conduct* investigation. Almost one year after the incident, the Appellant received a reprimand for his conduct. A few days later, the Appellant filed the harassment complaint.

The harassment reviewer for the Office for the Coordination of Harassment Complaints reviewed the matter and recommended that, if an investigation is mandated, it should be limited to interviewing the parties only and once the decision-maker was satisfied that there was sufficient information, the investigation could cease and a Record of Decision could be issued. The Respondent found that an investigation was not required, as the Alleged Harasser admitted to sending the texts, and the information was sufficient to determine harassment was not established, and the complaint was retaliatory. The Appellant filed an appeal. The ERC found neither breaches of procedural fairness, nor errors of law, and determined that the decision was not clearly unreasonable. The ERC recommended the appeal be dismissed.

In accordance with paragraph 47(1)(a) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the Adjudicator dismissed the appeal, having found that the Respondent's decision was not reached in a manner that contravened the principles of procedural fairness, contained no error of law, and is not clearly unreasonable. The Adjudicator also agreed, when considered in context, that the allegations did not constitute harassment.

NC-070 – Harassment

The Appellant was the subject member for several *Code of Conduct* investigations. She filed a harassment complaint against a member of the Professional Responsibility Unit (Alleged Harasser). The Appellant alleged that the manner in which the Alleged Harasser administered the investigation into her conduct and the manner in which he interacted with her in this time

were harassing in nature. More specifically, she alleged that the Alleged Harasser was aware that a witness had provided false information, yet he refused to provide her with any information relating to this matter and did not order that a new statement be obtained from the witness. The Appellant also alleged that the Alleged Harasser threatened her with another *Code of Conduct* breach, as she had contacted the witness herself. Finally, the Appellant also contended that a third party, who reported to the Alleged Harasser, was present during a conduct meeting and that it was intimidating and embarrassing.

The Respondent issued a written decision finding that the Alleged Harasser acted within the scope of his duties and that the alleged conduct did not meet the applicable definition of harassment. He declined to order a harassment investigation. The Respondent also concluded that all of the points set out in Allegations 1 and 3 were related to the conduct process.

The Appellant appealed the decision, and she claimed that an investigation into her harassment complaint should be conducted. The Appellant claimed that harassment could still exist in a conduct matter.

ERC Findings: The ERC found that the Respondent's Decision was not clearly unreasonable. In its view, the Respondent correctly found that the matters that were raised in Allegations 1 and 3 were related to the conduct proceedings and could have been or can be appealed in the form of a conduct appeal. In regards to Allegation 2, the ERC found that the Respondent had sufficient information to render a decision without an investigation. It further found that the Respondent did not err in finding that the allegation did not meet the definition of harassment. The Respondent had found that the email was not threatening in nature, but explained the possible consequence of contacting a witness.

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

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

The Appellant lodged a Harassment Complaint against the Officer in Charge (OIC) of the "X" Division Professional Responsibility Unit, alleging that he harassed her during the course of a conduct process in which she was the subject member.

Upon a review of the *Code of Conduct* investigator's disclosure package, the Appellant discovered a witness statement that she viewed as false. The Appellant emailed the witness, who was a fellow member, to provide her version of events and to ask clarifying questions.

The Alleged Harasser learned of the Appellant's contact with the witness and sent the Appellant an email informing her that contacting the witness may be perceived as "witness tampering and a potential further breach of the RCMP Act". He advised her to refrain from contacting further witnesses. The Appellant replied that her Member Workplace Advisor (MWA) advised her that she could contact witnesses during the conduct process and asked for the policy section that prohibited her from doing so. The Alleged Harasser did not reply to the Appellant, but he did communicate the answer to the MWA. At the subsequent conduct meeting, a conduct advisor, who works in the Alleged Harasser's office, was present to take notes for the Conduct Authority.

The Appellant filed a Harassment Complaint, alleging that the aforementioned incidents were harassment and she felt threatened and intimidated by the presence of the conduct advisor at her conduct meeting. She also claimed the Alleged Harasser failed to disclose new information

to her, which her MWA requested. The Respondent issued a Record of Decision, finding that an investigation was not required to determine that the Alleged Harasser was acting within the scope of his duties and that his actions did not meet the definition of harassment.

The Appellant presented an appeal disputing the Respondent's decision. The ERC found that the Respondent made no reviewable error and recommended the appeal be dismissed. In accordance with paragraph 47(1)(a) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the Adjudicator dismissed the appeal, finding that the Respondent's decision was not reached in a manner that contravened the principles of procedural fairness, was not based on an error of law, nor was it clearly unreasonable.

NC-071 – Harassment

The Appellant and a manager, the Alleged Harasser, were involved in a technical project. The Appellant felt that the Alleged Harasser had failed to provide the Appellant with information required to properly perform his duties. The Appellant was eventually removed from the project, and he felt that the Alleged Harasser's actions had caused him stress, frustration and embarrassment. The Appellant filed a harassment complaint (Complaint). On his Complaint Form, the Appellant provided some information regarding certain allegations, but the Complaint Form was not a complete account of the Appellant's concerns, as it generally referred to "ongoing incidents" and the Alleged Harasser "repeatedly ignoring requests and emails for information" without providing specific details regarding alleged occurrences. The Alleged Harasser provided a detailed written response to the Complaint, and was interviewed. The Respondent did not mandate an investigation into the Complaint. The Respondent concluded that there was sufficient information to find that the incidents raised by the Appellant did not constitute harassment.

The Appellant appealed the Respondent's decision. He expressed a concern that only the Alleged Harasser had been interviewed, and that he had not been able to respond to the Alleged Harasser's version of events. He argued that an investigation into his Complaint would have allowed the Respondent to have a more complete understanding of events that had taken place.

ERC Findings: The ERC acknowledged that there may be limited cases where an investigation is unnecessary, when sufficient information is before a decision-maker. However, where a decision-maker decides a harassment complaint in the absence of a mandated investigation, because they are of the view that there is sufficient information before them, the process must be fair. A complainant must have the opportunity to fully explain their side of the case before a decision is rendered, and they must be able to reply to the alleged harasser's version of events. The Appellant's inability in this case to offer this perspective through an interview or a statement, and his inability to reply to the Alleged Harasser's detailed version of events, resulted in a process that was procedurally unfair. The ERC also found that the Respondent's decision not to mandate an investigation was clearly unreasonable, as the limited evidence available to the Respondent did not provide a full story of what had occurred. At least two additional witnesses, and documentary evidence alluded to by both parties, may have allowed the Respondent to more meaningfully assess the Appellant's allegations of harassment.

ERC Recommendations: The ERC recommended that the appeal be allowed and that the matter be remitted for a new decision to another decision-maker with a direction to mandate an investigation into the Appellant's Complaint.

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

office, is as follows:

The Appellant lodged a harassment complaint against the Manager of "X" Division, alleging that he harassed him by withholding required information for project completion, rendering him unable to complete it by the deadline, which led to the Appellant's removal from the project.

The Respondent reviewed the harassment complaint, a follow-up email from the Appellant, and the notes of the Harassment Advisors/Investigators, which purported to reflect the response of the Alleged Harasser. Without the Appellant having an opportunity to rebut the Alleged Harasser's response, the Respondent determined that an investigation was not required, that there was sufficient information to determine harassment was not established, and that the Alleged Harasser was acting within the scope of his duties.

The Appellant presented an appeal disputing the Respondent's decision on the ground that it was clearly unreasonable. The ERC found the process of proceeding to a decision without further enquiries was procedurally unfair and by omitting to mandate an investigation in the absence of sufficient evidence, the Respondent made a manifest and determinative error, rendering the decision clearly unreasonable.

The Adjudicator agreed and, in accordance with paragraph 47(1)(b)(i) of the *Commissioner's Standing Orders (Grievances and Appeals)*, allowed the appeal, finding that the Respondent's decision was reached in a manner which contravened the principles of procedural fairness and is clearly unreasonable. The harassment complaint was remitted back to a new decision-maker with a direction that an investigation be completed and a new decision be rendered.

NC-072 – Harassment

The Appellant applied for two competitions that were posted at a Division. He was unsuccessful in respect to both competitions. The job bulletins, specifically the second one, asked for a characteristic based on race, which the Appellant submitted was contrary to RCMP policies and the *Canadian Human Rights Act*. A candidate other than the Appellant was appointed by promotion by exception (PBE) in the second competition.

The Appellant grieved his non-selection in the second competition. Although the details of the grievance are not known, the Appellant was retroactively appointed a Corporal (Cpl.) effective August 2017. The Appellant then filed a harassment complaint on the basis of race against the senior member of the Division. The Appellant claimed that the Alleged Harasser knew or should have known due to his position that it was contrary to human rights policies, both internal and external to the RCMP, to advertise in a job bulletin in respect to this particular characteristic. The Appellant claimed that two memorandums clearly set out what could and what could not be done in respect to hiring conditions for the position he applied for. The Respondent found no harassment. He determined that it was unnecessary to interview additional individuals because he had the necessary information to render a Decision. The Respondent acknowledged that the Alleged Harasser did want to staff some of his positions with members holding this particular characteristic due to the fact that the population being policed in that area had that personal characteristic.

The Appellant appealed the decision. He submitted that the mandated limited investigation did not sufficiently address his concerns and, had more of his named members been interviewed, the result would have been to collect evidence to establish that the Alleged Harasser did harass him. He further submitted that there were insufficient reasons given in the Decision and that the

Respondent did not consider the information contained in his two rebuttals to the Preliminary Investigation Report.

ERC Findings: The ERC found that the Respondent committed no reviewable error. The ERC found that the limited investigation was sufficient and addressed all of the concerns raised by the Appellant. The ERC also found that the Respondent did consider the information in the rebuttals because that information was simply a repeat of information already provided to the harassment investigators. Further, the Respondent's assessment of key documentation was reasonable.

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

Former Legislation Cases:

Grievances

G-735 – Harassment

The Grievor was the Detachment Commander at a Detachment which had experienced problems with overall performance and morale. Shortly before the Grievor started her position at the Detachment, a Management Review report had been completed and an accompanying action plan was put in place to address perceived deficiencies at the Grievor's Detachment. A key element of the action plan was to conduct weekly reviews and reports of the "Quality of Investigations" and "Quality of Supervision" at the Grievor's Detachment. The Respondent, who was the Detachment Commander at another Detachment, and the Non-Commissioned Officer in Charge, Operations, was assigned to conduct these weekly reviews of the Grievor's Detachment.

The Grievor alleged that the Respondent harassed her and abused his authority in multiple ways. The Grievor alleged that the Respondent refused to fulfill his obligations as a supervisor to guide and mentor the Grievor, that he undermined the Grievor by interfering directly with her subordinates, and that he provided "incorrect, inaccurate and defaming" information about the Grievor to RCMP management with the intention of ensuring that a *Code of Conduct* investigation would be initiated against the Grievor. The Grievor alleged that the *Code of Conduct* investigation led to her removal from her position as Detachment Commander.

The Level I Adjudicator denied the grievance on its merits. She found that the Grievor had not established that the Respondent's actions were consistent with the allegation of harassment and in particular an abuse of authority.

ERC Findings: The ERC found that the Grievor failed to establish that the Respondent harassed her or abused his authority in a way that amounted to harassment.

The ERC found that the relationship between the Respondent and the Grievor resembled a supervisory one because of the Respondent's role in the Management Review activities. The Respondent provided written guidance to the Grievor in his reports, but he did not take on the role of being the Grievor's mentor. The Respondent's failure to provide the Grievor with guidance that met the Grievor's expectations did not amount to harassment. The written guidance that was provided to the Grievor in the Respondent's reports was aimed at requiring performance to job standards and did not amount to harassment or an abuse of authority.

The ERC was of the view that the Respondent did not interact with the Grievor's subordinates in a way that undermined the Grievor's authority. While, in certain files, the Respondent provided direction to the Grievor's subordinates that was different from the prior direction given by the Grievor, it was within the scope of the Respondent's Management Review function to do so. The documentation in the record of the interactions between the Respondent and the Grievor's subordinates did not reveal an intent to undermine Grievor's performance of her job and did not constitute an abuse of authority.

The ERC found that the record did not support the Grievor's contention that the Respondent had provided information about her to RCMP management that was "incorrect, inaccurate and defaming" with the intention of ensuring that a *Code of Conduct* investigation would be initiated against the Grievor. The Respondent's involvement in the events leading to a *Code of Conduct* investigation did not meet the threshold of harassment or an abuse of authority.

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 Grievor filed a grievance alleging harassment against the Respondent, who had been ordered to review the files of her subordinates and her directions under a Management Review, which led to her removal as Detachment Commander. The Grievor complained that as her direct supervisor the Respondent had a duty to discuss issues with her and provide guidance, but instead, undermined her, abusing his authority. The Level I Adjudicator found the Grievor failed to establish harassment. The Grievor sought a review at Level II and the matter was referred to the ERC. The ERC recommended the grievance be denied. The Commissioner agreed and found that although the Respondent was not an optimal manager, the Grievor had failed to establish that the Respondent abused his authority and caused her removal. The Commissioner dismissed the grievance.

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-043 Conduct Board Decision (summarized in the October – December 2020 Communiqué)

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. 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. 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, and the Appellant appealed the conduct measure. 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. As well, the ERC found that the Board did not err in its assessment of applicable mitigating and aggravating factors. 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 presented an appeal challenging the conduct measures imposed by the RCMP Conduct Board, having established two allegations of discreditable conduct and ordering the Appellant to resign within 14 days in default of which he would be dismissed. The Appellant submits that in the absence of giving him a fair chance to explain himself, the proceedings were rendered procedurally unfair and that the Board erred by finding that he engaged in an extended campaign to defraud, and rejecting the Appellant's testimony that he acted impulsively, all leading to the conclusion that the Appellant's "wilful deception showed a 'fundamental character flaw which made him unsuitable for further [RCMP] employment'". The Appellant submits that the Board erred in finding that he had a criminal conviction which "is an indication of the gravity of the misconduct", as the Appellant has no criminal record, having been convicted of a provincial regulatory offence.

I am satisfied that the Board fully understood the nature of the conviction that resulted from the Provincial Court proceedings. Applying the clearly unreasonable standard means the Board is owed significant deference on the question of appropriate conduct measures. While the decision is not perfect, I find that the Appellant has not established that the Board made any manifest and determinative errors. The Board acted within his jurisdiction, and having heard and assessed the evidence directly, deliberated, and issued a decision, first orally, and then, nearly seven months later, in writing, that is justifiable, transparent, and intelligible. I am satisfied that the Board identified the appropriate range, considered the relevant mitigating and aggravating factors, and ordered a sanction that is not clearly unreasonable in the circumstances.

I dismiss the appeal and confirm the conduct measures imposed by the Board.

C-046 Conduct Board Decision (summarized in the January – March 2021 Communiqué)

Between mid-June or July 2016 to late November 2016, the Appellant had an affair with a member of the public (Ms. X). Members of the detachment had seen the member's police vehicle out of his patrolling area while he was on duty and reported the issue to the detachment Commander. It was learned that Ms. X resided in this area where the Appellant's police vehicle was seen. The detachment Commander met with the member and ordered him not to attend the residence of Ms. X while on duty. The member was charged with four allegations of breaching the *Code of Conduct*. During the investigation, another allegation was added for lying to the investigator. A Conduct Board later ordered the Appellant to resign. The Conduct Board's decision was sent by email to the parties' representatives on August 27, 2018. The Appellant had waived his right to be personally served with the decision. His Member Representative (MR) acknowledged receipt of the decision on August 27, 2018. The Appellant appealed that decision

on September 11, 2018. The Office of Coordination of Grievances and Appeals (OCGA) raised the issue of timeliness as it appeared that the appeal was filed one day outside the 14 day time limit to do so. The Respondent argued that the appeal was filed late, but that the Commissioner should grant an extension. The ERC found that the decision served on August 27, 2018 was the final written decision. Therefore, the Appellant was served, through his representative, on August 27. The ERC found that the Appellant filed his appeal outside the statutory time limit to do so. The ERC further found that there were no exceptional circumstances to recommend a retroactive extension of the time limit. The ERC recommended that the appeal be denied for being untimely.

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

On March 26, 2021, the Chairperson of the ERC, issued his findings and recommendations (ERC C-2019-025 (C-046)) (Report) and recommends that the appeal be dismissed for being filed outside of the statutory time limit. The ERC did not pronounce on the merits. While I agree with the ERC that the Appellant failed to file his appeal within the statutory time limit, for reasons I will briefly explain, I disagree that a retroactive extension is not warranted (Report, paras. 25-26, 37-46).

Pursuant to paragraph 29(e) of the *Commissioner's Standing Orders (Grievances and Appeals) (CSO (Grievances and Appeals))*, when considering an appeal, the Commissioner (or her delegate) has the power to decide all related matters, including "to extend the time limit referred to in section 22 and subsection 23(1) in exceptional circumstances". In *Canada (Attorney General) v. Pentney*, 2008 FC 96 (*Pentney*), the Federal Court adopted four factors to consider when determining whether a time extension for commencing a proceeding before an administrative tribunal is warranted. This non-exhaustive list of factors includes whether: (1) there was a continuing intention to pursue the application or appeal; (2) the matter discloses an arguable case; (3) there is a reasonable explanation for the delay; and (4) there is no prejudice to the other party in allowing the extension. In my view, these four factors fall in the Appellant's favour. I am prepared to accept there is an arguable case, he has maintained an intention to appeal the conduct measures which resulted in his termination, and there is at least some modicum of an explanation for the minimal delay that occurred. Moreover, I recognize that the Respondent was supportive of an extension demonstrating that the Force would not suffer any prejudice in doing so.

I grant the Appellant a retroactive extension so that this appeal can advance. I note that the Parties made fulsome submissions on the merits involving some novel issues, and the record is complete in this regard. Even so, since the ERC focused solely on the preliminary prescription period issue, I have decided to provide the Appellant 14 days to inform the OCGA whether he would like this matter returned to the ERC for an examination of the merits (recognizing the delay that is likely to occur), or request that the appeal not be re-referred and instead be presented for a decision pursuant to subsection 45.15(3) of the *RCMP Act*. In the event the Appellant prefers final and binding adjudication in the absence of further ERC review, I direct the OCGA to return the appeal for a decision under subsection 45.16(1) of the *RCMP Act* without delay.

Other Appeals

NC-061 Harassment (summarized in the January – March 2021 Communiqué)

The Appellant lodged a harassment complaint in which he asserted that his supervisor (Alleged

Harasser) harassed him. The Appellant specified that the Alleged Harasser compelled him to retire from the RCMP through a number of inappropriate and potentially discriminatory actions which she attempted to disguise as legitimate performance management initiatives. This matter was the subject of a joint harassment and *Code of Conduct* investigation wherein a number of witnesses, including the parties, gave evidence. The ERC found that the Appellant, although he had retired when he filed his appeal, retained his standing to appeal the decision. Notwithstanding, the ERC found that the Respondent did not err in his decision. There was evidence that the Appellant had performance issues which the Alleged Harasser tried to address with various means, and there was no evidence that the Alleged Harasser treated the Appellant disrespectfully. 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, who was a regular member, lodged a harassment complaint against his supervisor, alleging he was intimidated into retirement to avoid the Performance Enhancement Program (PEP). The Alleged Harasser had commenced a performance evaluation process to assess the Appellant, who she found had not been carrying the same task load as his coworkers and produced a limited quantity of work. The Appellant was unsuccessful in the process, so the Alleged Harasser informed him she was going to initiate the PEP. The Appellant chose to retire instead. The Appellant regretted his choice and was unsuccessful at revoking his discharge request. Within the complaint of harassment, he alleged that he was micromanaged, the process breached protocol, and the Alleged Harasser only wished to force him to retire to free his position.

An investigation was mandated. The investigation report pointed out that policy was not followed and the Alleged Harasser spent little time observing the Appellant prior to determining he should enter the PEP. The Respondent found harassment had not been established, determining the Alleged Harasser had spent almost a year observing the Appellant and dealt with him in a respectful and polite manner. The Appellant appealed, claiming procedural unfairness in allowing hearsay evidence. He also claimed the Respondent did not consider all the evidence, rendering the decision clearly unreasonable. No error of law was pled.

The ERC found hearsay evidence is allowable, the decision was procedurally fair, and that there was no manifest and determinative error that rendered the decision clearly unreasonable. The ERC recommended the appeal be denied. Although it was not raised by either party, the ERC conducted a standing analysis.

The Adjudicator determined the type of harassment alleged by the Appellant was an abuse of authority and age discrimination. The Adjudicator found that although there were inconsistencies in the performance evaluation process and the Alleged Harasser did not observe the Appellant for a reasonable period, the evidence did not demonstrate that those acts were carried out to harass him or endanger his employment to free his position. The Adjudicator further found the Appellant may have been influenced to retire instead of engaging in PEP by another party, who referenced his age. However, these remarks were not made by the Alleged Harasser. The Adjudicator determined that although the Respondent made some errors, these were not manifest and determinative to the outcome. The Adjudicator further found that the Respondent's decision was not reached in a manner that contravened the principles of procedural fairness nor was it clearly unreasonable. The Adjudicator noted that even if a reviewable error had been proven, the Appellant's resignation is irrevocable under section 22 of the *RCMP Regulations*. The appeal was dismissed.

NC-062 Harassment (summarized in the January – March 2021 Communiqué)

The Appellant filed a harassment complaint against a supervisor (Alleged Harasser). The Appellant made an allegation of harassment due to a document he received as a result of a disclosure process in a grievance he had filed. In the document, the Alleged Harasser wrote that the Appellant lacked morals and ethics. The Office of the Coordination of Harassment Complaints (OCHC) recommended either a limited investigation or no investigation. The Respondent decided not to conduct a *Code of Conduct* investigation into the harassment complaint on the basis that he/she determined that the definition of harassment had not been met because the document was not “directed” at the Appellant. Further, the Respondent was of the view that it was a single event which did not have a long-lasting detrimental effect on the Appellant. The ERC found that the Respondent’s Decision was clearly unreasonable. The Respondent erred in her interpretation of the harassment definition. The ERC found that “directed at” does not mean that a comment must be received by the complainant. The ERC recommended that the appeal be allowed; that an investigation into the Appellant’s complaints be undertaken; that the matter be decided by a different decision-maker; and that a copy of the Final Adjudicator’s decision be forwarded to the OCHC.

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

The Appellant applied for a lateral position and was denied on two occasions. He grieved the non-selection and in the course of receiving access to relevant information, he learned of an email that the Non-Commissioned Officer in Charge (the Alleged Harasser) wrote in September 2016. The email provided rationale to senior management and Career Development and Resourcing as to why the Appellant was not a suitable candidate within her unit. Based on the content of that email, the Appellant lodged a harassment complaint in August 2017.

A Harassment Reviewer from the Office for the Coordination of Harassment Complaints (OCHC) reviewed the matter and recommended the Respondent mandate a limited investigation or render a decision without an investigation, if satisfied there is sufficient evidence to make a finding. The Respondent subsequently issued a Record of Decision (ROD) finding there was sufficient information without mandating an investigation to determine the Alleged Harasser’s behaviour did not meet the definition of harassment. She found the content of the email was not directed at the Appellant and it was a single isolated incident.

The Appellant presented this appeal stating the Respondent’s decision was based on an error of law and clearly unreasonable. He argued that the Alleged Harasser’s comments did not need to be made to him in order for them to be “directed at” him. Further, he stated the single incident was severe and had long lasting effects on him professionally and personally. He claims after two years, he still has not been placed into a permanent position. He attributes this to the comments in the email.

The ERC agreed with the Appellant and found that the Respondent’s decision was clearly unreasonable. The ERC found the comments did not need to be received by the Appellant, only “aimed” at him to fit the “directed at” criteria. Further, they found an investigation would have had to take place to establish that this was in fact a single isolated incident. Moreover, ERC found that the harassment policy requires a decision-maker to mandate an investigation when informal resolution is not possible. Consequently, the ERC recommended a harassment investigation be mandated for the Appellant’s complaint.

In accordance with paragraph 47(1) (b) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the final level Adjudicator allowed the appeal, finding that the Respondent's decision was clearly unreasonable. The Adjudicator apologized on behalf of the Force.

NC-063 Harassment (summarized in the January – March 2021 Communiqué)

The Appellant filed a harassment complaint relating to a conversation his wife heard between the Alleged Harasser and a retired member in a public place. The Appellant's wife informed him that the conversation related to a *Code of Conduct* process he was facing. The Appellant filed a harassment complaint indicating that he felt humiliated and belittled about this, and that a *Code of Conduct* proceeding should be initiated against the Alleged Harasser. The Respondent found that his complaint did not meet the definition of harassment because the remarks were not directed at the Appellant and did not occur in the workplace. Consequently, the Respondent chose not to mandate an investigation into the harassment complaint. The Respondent did, however, forward the matter to a Conduct Authority for review. The Appellant appealed the decision, but focused on the action that was taken against the Alleged Harasser and said it was insufficient. The ERC found that the Appellant did not have standing to appeal the conduct measure imposed on the Alleged Harasser in a separate process. As the Appellant had not provided further arguments relating to the Respondent's decision, there was no basis for the ERC to review the Respondent's Decision in terms of statutory appellate grounds of review. The ERC recommended the appeal be dismissed.

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

The Appellant filed a Harassment Complaint against his Detachment Commander (the Alleged Harasser) after being notified by his wife that she overheard him while off-duty, talking to a retired member about the Appellant's Code of Conduct investigation.

A Harassment Reviewer from the Office for the Coordination of Harassment Complaints (OCHC), reviewed the matter and advised the Respondent that the Alleged Harasser's behaviour may not be consistent with the elements of harassment, since the remarks were not directed to him, and did not occur at the location of the workplace. On that basis, the Respondent issued a decision that the behaviour did not constitute harassment and no investigation was ordered. However, having determined the conduct was inappropriate, the Respondent referred the matter to the Conduct Authority. Subsequently, the Alleged Harasser was issued a negative 1004, having admitted the behaviour was inappropriate. The Appellant filed an appeal of the Respondent's decision, seeking a review of the conduct process, on the basis that the sanctions imposed on the Alleged Harasser were inadequate. The Appellant made no submission relating to any errors in the Respondent's decision respecting his Harassment Complaint. The Appellant did not request an investigation of his Harassment Complaint, nor did he make any argument that the Respondent's finding was incorrect in concluding that the behaviour was not harassment. The Respondent raised the preliminary issue of standing, advising that the redress sought, consisting of an appeal of the conduct process, did not apply to the Respondent's decision and the conduct process was a separate process from the investigation and resolution of harassment complaints. The Appellant insisted by email he was attempting to appeal both, but made no submission, despite follow up by the OCGA.

The ERC found the Appellant had no standing and recommended the appeal be dismissed.

In accordance with paragraph 47(1)(a) of the *Commissioner's Standing Orders (Grievances and Appeals)*,

Appeals), the Adjudicator dismissed the appeal, having found that the Appellant did not establish that the Respondent's decision was contrary to the principles of procedural fairness, based on an error of law or clearly unreasonable. The Adjudicator also accepted the ERC finding that the Appellant does not have standing to dispute the conduct process involving the Alleged Harasser.

The Adjudicator emphasized that spreading gossip about a fellow member or employee, could meet the definition of harassment. Although gossip by its nature is not directly received by a complainant, the complainant is directly impacted, as its target. Even if the conduct in question does not occur at an RCMP facility or event, by virtue of the working relationships, it impacts the workplace. The RCMP takes harassment complaints seriously, including allegations that an employee or member has been the victim of gossip, when it has been disseminated by a coworker or superior, in a public space. The RCMP encourages victims of harassment to come forward.

NC-064 Harassment (summarized in the January – March 2021 Communiqué)

The Appellant filed a harassment complaint against her superior (Alleged Harasser). The Appellant claimed that the Alleged Harasser was not providing the Appellant with sufficient support and training and it was reported to her by her immediate supervisor that the Alleged Harasser was keeping an eye on her. Further, the Alleged Harasser contacted the Appellant, who was Off Duty Sick (ODS), at the time and directed her to continue completing her files. The Office of the Coordination of Harassment Complaints (OCHC) recommended a limited investigation. The Respondent decided not to conduct a *Code of Conduct* investigation into the harassment complaint on the basis that the allegations did not meet the definition of harassment. The ERC found that the Respondent's Decision was clearly unreasonable. The Respondent erred in not mandating an investigation. The ERC recommended that the appeal be allowed; that an investigation into the Appellant's complaints be undertaken; and that a copy of the Final Adjudicator's decision be forwarded to the OCHC.

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

The Appellant filed three harassment complaints against supervisors/management at her detachment. This appeal relates to the harassment complaint filed February 27, 2018, against the Appellant's Line Officer (the Alleged Harasser). The Appellant detailed five incidents on her Form 3919 – Harassment Complaint.

A Harassment Reviewer from the Office for the Coordination of Harassment Complaints (OCHC) reviewed the matter and recommended that if an investigation is mandated, that it be limited to "initially" interviewing the Appellant and Alleged Harasser. The Reviewer added that the Respondent may render a Record of Decision (ROD) once satisfied there is sufficient evidence to make a finding. The Respondent found that there was sufficient information, without mandating an investigation, to determine the Alleged Harasser's behaviour did not meet the definition of harassment.

In July 2018, the Appellant received the Respondent's ROD and presented this appeal stating the decision was reached in a manner that contravened the applicable principles of procedural fairness and is clearly unreasonable. She explained that the Form 3919 did not allow her to describe the full scope of her harassment, so she documented 56 pages of events and collected an additional 44 pages of supporting documents that she wished to include, but the Harassment Reviewer told her it would not be accepted. She argued she was not given an opportunity to

provide this information for the Respondent's consideration as per Administrative Manual (AM) XII.8 section 5.7.1.3 that states a complainant can expect to be provided with an opportunity by the OCHC to include supplemental information.

The ERC agreed with the Appellant that section 5.7.1.3 was not adhered to and that an investigation was required. The ERC wrote "[t]he circumstances and details in respect to these allegations remains to this day unknown and to make a finding 'with certainty' that harassment did not take place is clearly unreasonable". Consequently, the ERC recommended the decision be set aside and an investigation be mandated into the Appellant's allegations.

In accordance with paragraph 47(1)(b) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the Adjudicator allowed the appeal, finding that the Respondent's decision was clearly unreasonable. The Adjudicator directed for the current Commanding Officer of "X" Division to review the supplementary information referenced by the Appellant, and proceed in accordance with the policies in effect at the time.

NC-065 Harassment (summarized in the January – March 2021 Communiqué)

The Appellant filed a harassment complaint against a superior (Alleged Harasser). The Appellant challenged the decision to remove him from his position temporarily as a result of a *Code of Conduct* matter. He argued that he was not provided with the opportunity to discuss the reassignment. The Appellant further alleged that he had his access to email systems removed without any satisfactory explanation. The Office of the Coordination of Harassment Complaints (OCHC) recommended a limited investigation. The Respondent decided not to conduct a *Code of Conduct* investigation into the harassment complaint on the basis that the Alleged Harasser was simply performing his managerial responsibilities. The Respondent found that the Appellant was not a victim of harassment. The ERC found that the Respondent's Decision was not clearly unreasonable. 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 filed a harassment complaint against the Conduct Authority (Alleged Harasser) who ordered his temporary reassignment to another unit, pending a *Code of Conduct* investigation. Subsequently, the Appellant claimed he did not have meaningful work and stopped receiving divisional emails. The Appellant claimed that the Order of Temporary Reassignment and the inability to access his emails constituted harassment.

The Harassment Reviewer from the Office for the Coordination of Harassment Complaints (OCHC) advised the Respondent that the complaint had the potential to be resolved informally and recommended the assistance of the Informal Conflict Management Practitioner (ICMP). The Harassment Reviewer further noted that the behaviours of the Alleged Harasser were consistent with his managerial responsibilities.

The parties agreed to participate in an informal resolution process and were referred to ICMP. Over the next six months, the Appellant did not take steps to participate and the Alleged Harasser eventually retired. The Harassment Advisor closed the ICMP process and notified the Respondent of the options to mandate an investigation or render a final decision on the existing information, if sufficient.

The Respondent determined that the Alleged Harasser's behaviour was not consistent with the

elements of harassment, since the Alleged Harasser was acting within the scope of his duties as a Conduct Authority. Further, if the Appellant wished to challenge the temporary reassignment, he could have filed an appeal, as authorized by the conduct policy. The Respondent also found there was no indication that the Alleged Harasser was responsible for the Appellant's inability to access internal emails/communications. The Respondent dismissed the complaint without further investigation.

The Appellant appealed the Respondent's decision on the grounds that it was clearly unreasonable. The ERC found the Respondent made no reviewable error and recommended the appeal be dismissed.

In accordance with paragraph 47(1)(a) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the Adjudicator dismissed the appeal and accepted the ERC finding that the Respondent made no reviewable error.

NC-066 Harassment (summarized in the January – March 2021 Communiqué)

The Appellant filed a harassment complaint (Complaint) against the Alleged Harasser, who was his direct supervisor. The Appellant claimed that the latter's change in operational policy and the requirement to be on call while off-duty was adversely affecting his personal and family life. The Respondent directed a limited investigation of the Complaint, as a result of which only the Appellant and Alleged Harasser were interviewed. During the investigation, the Appellant requested that the Respondent recuse himself from deciding the Complaint, particularly in light of indications from the Alleged Harasser that he had previously communicated with the Respondent on issues that had given rise to the Complaint. The Respondent obtained clarification from the Alleged Harasser as to those prior communications, and then ruled that he would not recuse himself. He later found that the Complaint was not established. The Appellant appealed the Respondent's Decision. He argued that the Respondent should have recused himself. As for the Respondent's Decision regarding the Complaint, the Appellant questioned why certain documents identified as potentially relevant by the Respondent had not been obtained in the investigation. He also questioned why an independent witness to one of the incidents alleged in the Complaint had not been interviewed. The ERC found that, in keeping with principles of procedural fairness, the Respondent was required to provide the Appellant with an opportunity to address any information obtained from the Alleged Harasser which was relevant to the issue of recusal. Because the Appellant had not been given such an opportunity before the Respondent rendered his recusal ruling, his right to be heard had been breached. Finally, the limited investigation mandated by the Respondent resulted in a limited ability to assess the Complaint. Due to a breach of the Appellant's right to be heard, the ERC recommended that the Final Adjudicator allow the appeal and remit the matter to another decision-maker. The ERC further recommended that the new decision-maker render a new decision which considers any additional information obtained.

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

The Appellant, a member of a small detachment, lodged a harassment complaint against his District Commander (Alleged Harasser) for: implementing a new unsigned policy requiring him to be on call at all times for Operational Readiness (OR), with a police vehicle to be kept at his home during his off hours; for requiring him to work without backup for several consecutive weeks; for making inappropriate remarks when he complained the policy was interfering with his family life; for threatening to close his office if he failed to comply with the request; for bullying

him into retracting his initial concerns which was in an email cc'd to other members; and for requiring him to submit a Workplace Accommodation request for time off during his off duty hours and then denying it when he did not provide a list of events. The Appellant claimed discrimination on the grounds of family status.

The Appellant advised the Alleged Harasser, prior to lodging the complaint that the new mandatory OR was against existing policy which specified it was voluntary. The Alleged Harasser, in order to demonstrate the Appellant was incorrect in his interpretation of the policy, liaised with the Respondent and other superiors and referred to an email in which the new mandatory OR policy had been approved by the Respondent.

A harassment reviewer from the Office for the Coordination of Harassment Complaints recommended a limited investigation prior to the decision being made. A limited investigation was mandated and ensued which did not include the statements of witnesses, only the Appellant and the Alleged Harasser. Prior to the Respondent's determination of the complaint, the Appellant requested the Respondent recuse himself as he had supported the Alleged Harasser's interpretation of the new policy, which the Appellant submits was utilized to harass him. The Respondent declined to recuse himself and sent the parties his written decision in a letter, indicating that he had further discussed the matter with the Alleged Harasser relating to his involvement and that his advice was provided on a general basis and not in relation to this particular matter. The Appellant had not been a party to the discussion which took place following the date on which his complaint was lodged and the recusal requested.

The Respondent subsequently issued a Record of Decision and determined that the Alleged Harasser was acting within the scope of his duties and his actions did not meet the definition of harassment.

The Appellant presented an appeal disputing the Respondent's decision, primarily on the grounds that the Respondent was not impartial and the process was procedurally unfair. The ERC agreed, recommended the Adjudicator set aside the Respondent's decision, allow the appeal, remit the matter for a supplementary investigation, and a new decision-maker be appointed.

In accordance with subparagraph 47(1)(b)(i) of the *Commissioner's Standing Orders (Grievances and Appeals)*, the Adjudicator accepted the ERC recommendation, allowed the appeal, finding that the Respondent's decision was reached in a manner which contravened the principles of procedural fairness, set aside the Respondent's decision, and remitted the matter for determination by a new decision-maker.

NC-067 Medical Discharge (summarized in the January – March 2021 Communiqué)

After a 3-year medical leave, the Appellant attempted a Graduated Return to Work (GRTW) in July 2012 until July 2013, but he began a second period of medical leave in July 2013, from which he did not return to work. The Health Services Officer (HSO) issued the Appellant an O6 medical profile, meaning that the Appellant was unable to return to work for the foreseeable future. The Appellant grieved this change to his medical profile, which was partially upheld by a Level I Adjudicator. The Appellant's counsel advised the Force that the Appellant remained interested in a GRTW, and the Force reiterated that updated medical information would be required for a GRTW. An HSO panel was assembled and it recommended that the Appellant undergo a second Independent Medical Exam. The Appellant failed to answer this request. The Force initiated discharge proceedings. In his response to the Notice of Intent to Discharge (NOI), the Appellant namely argued that his GRTW agreement was not respected by the Force and that

the Force had done little to accommodate his condition. The Appellant further argued that the discharge proceedings were in breach of his section 15 *Canadian Charter of Human Rights (Charter)* right.

The Respondent found that the Appellant failed to cooperate with the accommodation process, caused the process to flounder and therefore, he could not be accommodated to the point of undue hardship. The Respondent ordered the Appellant's discharge. The ERC found that the Respondent erred by failing to address contradicting evidence and differing versions regarding the Appellant's participation in the accommodation process. The ERC further found that the Respondent erred in not addressing the Appellant's *Charter* argument. The ERC recommended that the appeal be allowed and the matter remitted for a new decision.

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

The Appellant went on medical leave in April 2009. In November 2011, his health care provider cleared him to commence a graduated return to work (GRTW) at his home. The GRTW was not successful.

In July 2013, the Health Services Officer (HSO) informed the Appellant that he was unfit to return to the workplace. His medical profile was changed to a permanent "O6". The Appellant grieved that decision.

Between 2013 and 2014, the Appellant underwent an independent medical examination (IME). The assessor concluded that the Appellant was fit for duty and could commence a GRTW. However, in the HSO's view, the IME supported a permanent "O6" medical profile for the Appellant. The HSO later claimed that she had not received answers to certain questions, and that a new IME was required.

In June 2017, an HSO panel determined that a second IME was needed. The Appellant did not submit to the IME. Discharge proceedings were initiated in September 2017, ultimately leading to the Respondent's decision to discharge the Appellant, effective September 11, 2018.

The Appellant appealed alleging, inter alia, that the Force failed to establish that it accommodated him to the point of undue hardship, and in any event, paragraph 6(a) of the *Commissioner's Standing Orders (Employment Requirements)* used to effect the discharge, violates the *Charter*, all of which led to a decision that was procedurally unfair, based on an error of law, and clearly unreasonable.

The appeal was referred to the ERC for review pursuant to subparagraph 17(d)(i) of the *Royal Canadian Mounted Police Regulations, 2014*. The Chairperson of the ERC recommended that the appeal be allowed.

The Adjudicator agreed that by not addressing differing versions of crucial facts, the Respondent's decision could not stand. The Adjudicator therefore allowed the appeal, ordered the Appellant reinstated from the date of his discharge, and directed that the matter be put before a new decision-maker.

Former Legislation Cases:

Grievances

G-732 Harassment (summarized in the January – March 2021 Communiqué)

Between September 2011 and March 2014, the Grievor was off work several times for medical reasons. To facilitate his return to work, he received counselling from the Alleged Harasser. In November 2012, the Grievor obtained access to his medical record and was therefore able to read what the Alleged Harasser had written about him. Since he was dissatisfied by the latter's findings, the Grievor filed a harassment complaint in which he claimed he was mistakenly diagnosed as having medical issues, which prevented him from returning to operational duties. The Grievor's complaint was not investigated, and the Respondent dismissed the complaint. On August 8, 2014, the Grievor filed a grievance indicating that he was challenging the decision to dismiss his harassment complaint. The ERC concluded that the Grievor failed to meet his burden of establishing that the Respondent's decision contravened applicable policies. On that issue, it was found that the Respondent's decision not to conduct an investigation was reasonable under the circumstances. Finally, the ERC pointed out that although the Grievor's dispute with the RCMP was set out in the form of a harassment complaint, it seemed to relate more to the assessment and the medical profile it attributed to him over the years. The ERC recommended that the grievance be denied.

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

[Translation]

The Grievor filed a harassment complaint. Being of the opinion that the Grievor's situation did not meet the definition of harassment, the Respondent dismissed the complaint. The Grievor challenged the decision by filing this grievance. The Level I Adjudicator denied the grievance on the grounds that the Respondent had followed the procedure for screening the Grievor's harassment complaint. The ERC considers that the Grievor failed to present evidence demonstrating that the Respondent's decision was unjustified or unreasonable. The ERC therefore recommends that the Commissioner deny the grievance. The Commissioner agrees with the ERC's recommendation and denies the grievance.

G-734 Discrimination (summarized in the January – March 2021 Communiqué)

In February 2000, the Grievor had surgery to address symptoms he had experienced following two injuries he had sustained while on duty in previous years. Upon returning to work, the Grievor resumed the same duties he had held prior to the surgery. In 2005, the Health Services Officer (HSO) reviewed the Grievor's periodic health assessment and advised the Grievor that his medical profile was being updated and that his occupational factor was being changed from an "O2" to an "O3" designation. In September 2009, the Grievor requested that his medical profile be changed to an "O2". The Grievor indicated that he was aware of other members who had undergone the same surgery and they were not subject to the same restrictions as he was. The Level I Adjudicator denied the grievance on its merits. The ERC found that RCMP Health Services did not breach relevant RCMP policies. The ERC found that the scientific guidelines used by the HSO in making a decision on the medical profile of the Grievor were rationally connected to the performance of the job because their purpose was to ensure that members can safely and effectively perform the functions of a fully operational police officer, where physical altercations are an ever-present risk. There was medical evidence in the record which showed that designating the Grievor at the "O2" level would impose undue hardship on the Force. 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 Grievor sustained injuries on duty. He underwent surgery, and resumed his tactical role. In 2004, his physician recommended that he avoid excessive movement during the Physical Abilities Requirement Evaluation (PARE). In 2005, the HSO advised him that his medical profile was being updated from an "O2" to an "O3", which included restrictions on his operational duties. The Grievor was placed into an administrative position. He challenged the Respondent's decision to refuse his request for his medical profile to be changed to an "O2". A Level I Adjudicator denied the grievance. The matter was referred to the ERC. The ERC recommended that the grievance be denied, finding that the Grievor had not established, on a balance of probabilities, that the Respondent's decision was inconsistent with policy or legislation. The Commissioner accepts the ERC findings and recommendation. The grievance is denied.