

Communiqué – July to September 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>.

In this issue:

[ERC Findings and Recommendations](#)

[Under Current *RCMP Act*](#)

[Conduct Appeals](#)

[Other Appeals](#)

[Under Former *RCMP Act*](#)

[Grievances](#)

[Commissioner of the RCMP Final Decisions](#)

[Under Current *RCMP Act*](#)

[Conduct Appeals](#)

[Other Appeals](#)

[Quick Reference Index](#)

Findings and Recommendations

Between July and September 2021, the RCMP External Review Committee (ERC) issued the following 13 findings and recommendations:

Current Legislation Cases:

Conduct Appeals

C-049 – Conduct Board Decision

Three contraventions of the *Code of Conduct* were established against the Appellant for the sexual harassment of a public service employee (the Complainant) in the workplace. On three occasions, the Appellant made inappropriate comments and acted inappropriately towards the Complainant. Despite strong mitigating factors, an RCMP Conduct Board (Board) determined that the gravity of the misconduct was such that the Appellant's dismissal from the Force was justified.

The Appellant is appealing the Board's decision on the basis that it contravened the principles of procedural fairness and was clearly unreasonable. More specifically, he argues that the Board, in addressing Allegation 1, failed to provide adequate reasons with respect to his findings on the credibility of the parties. The Appellant also submits that the sanction imposed is clearly unreasonable and grossly disproportionate to the substantiated conduct.

ERC Findings: With respect to the Appellant's first ground of appeal, the ERC clarified that the latter is subject to a reasonableness review as opposed to a correctness review as suggested by the Appellant when he argues that his procedural rights were breached. In this regard, the ERC concluded that the Board recognized and adequately dealt with the contradictory evidence. It also found that the Board's reasons clearly articulate why it came to the conclusion that it did with respect to Allegation 1. As for the Appellant's second ground of appeal, the ERC determined that the Board committed no manifest or determinative error in its evaluation of the evidence.

ERC Recommendations: The ERC recommends that the appeal be denied and the imposed conduct measure be confirmed.

C-050 – Conduct Authority Decision

The Appellant was a supervisor at a Detachment. One of his subordinates, Cst. X, initiated a harassment complaint against the Appellant. In the course of making enquiries about the harassment complaint, it was learned that there were allegations of inappropriate behaviour by the Appellant towards two other female members at the Detachment.

Following a harassment investigation regarding the actions of Cst. X and a Conduct Meeting, the Conduct Authority issued a written decision where he found that the Appellant adversely impacted Cst. X, by watching her walk from behind (Incident 1), treating her differently from male members (Incident 2), and making inappropriate sexual comments and trying to pry into her current relationship (Incident 3), contrary to section 2.1 of the *Code of Conduct*. The Conduct Authority found that the Appellant's behaviour was sexual misconduct amounting to harassing behaviour. The Conduct Authority imposed conduct measures of a temporary two-year demotion, an order not to be placed in an acting supervisory role for a one-year period, a permanent

transfer from his current position and location, a direction to attend counselling and apologize to Cst. X, and a direction to participate in a campaign against violence towards women and children at the Appellant's new position.

The Appellant alleges that the Conduct Authority's decision contravened the principles of procedural fairness, was based on an error of law and was clearly unreasonable. The Appellant argues that he was denied procedural fairness because he was not provided advance notice that he was potentially facing a demotion. The Appellant raises a number of arguments, appealing the Conduct Authority's finding on the allegation. The Appellant also appeals the conduct measures imposed by the Conduct Authority. The Appellant alleges that the conduct measures imposed were clearly unreasonable because the Conduct Authority considered certain irrelevant considerations. The Appellant alleges that the Conduct Authority failed to consider certain mitigating factors and improperly considered an aggravating factor when imposing conduct measures and that the demotion was not proportionate to the circumstances.

ERC Findings: The ERC found that the Appellant was not denied procedural fairness because he was informed, through the Notice of Conduct Meeting, of the conduct measures that were available to the Conduct Authority, which included demotion.

The ERC found that the Conduct Authority was not required to consider the intentions of the Appellant when he interacted with Cst. X when making a finding of sexual harassment.

The ERC found that the Conduct Authority did not make an error in weighing the evidence that led to a clearly unreasonable Decision on the Allegation.

The ERC found that the Conduct Authority was not required to make an express finding in his decision with respect to every element of the case and every argument made.

The ERC was of the view that the Conduct Authority made a clearly unreasonable error when he found that the Appellant's behaviour in Incident 1 amounted to harassment, because he did not explain how the Appellant's behaviour met the reasonable person test of harassment. The Decision on the Allegation was clearly unreasonable because the Conduct Authority failed to sufficiently explain why Incident 1 amounted to sexual harassment. However, the ERC found that the Allegation can still be established on the basis of Incidents 2 and 3 because the Conduct Authority did not make a reviewable error in his finding of sexual harassment with respect to Incidents 2 and 3.

The ERC found that the conduct measures imposed on the Appellant by the Conduct Authority were not clearly unreasonable and do not require intervention on appeal. The Conduct Authority identified the appropriate range of conduct measures he would consider imposing in the Decision. With the exception of one aggravating factor, "the Appellant's failure to take responsibility", the Conduct Authority's identification of both mitigating and aggravating factors in his Decision was supported by the record and was not influenced by irrelevant considerations. The conduct measures selected by the Conduct Authority were proportionate to the misconduct and supported by the principles in the Conduct Measures Guide.

ERC Recommendations: The ERC recommends that, pursuant to subsection 45.16(2)(b) of the *RCMP Act*, the appeal be allowed in part. The ERC recommends that the Commissioner find that the Appellant's conduct, in relation to Incidents 2 and 3, supports a finding that the Allegation was established.

The ERC recommends that, pursuant to subsection 45.16(3)(a) of the *RCMP Act*, the appeal relating to sanctions be dismissed and that the conduct measures imposed by the Conduct Authority be confirmed.

C-051 – Conduct Authority Decision

The Appellant was a supervisor at a Detachment. A female member at the Detachment, Cst. Z, initiated a harassment complaint against the Appellant. In the course of making enquiries about the harassment complaint, it was learned that there were allegations of inappropriate behaviour by the Appellant towards two other female members at the Detachment.

Following a harassment investigation regarding the actions of Cst. Z and a Conduct Meeting, the Conduct Authority issued a written decision where he found that the Appellant adversely impacted Cst. Z, by “making inappropriate sexual comments in the presence of other people, checking her up and down, and asking her to turn around to look at her outfit,” causing Cst. Z to feel embarrassed, demeaned and uncomfortable, contrary to section 2.1 of the *Code of Conduct*. The Conduct Authority found that the Appellant’s behaviour was sexual misconduct amounting to harassing behaviour. The Conduct Authority imposed conduct measures of a temporary two-year demotion, an order not to be placed in an acting supervisory role for a one-year period, a permanent transfer from his current position and location, a direction to attend counselling and apologize to Cst. Z, and a direction to participate in a campaign against violence towards women and children at the Appellant’s new position.

The Appellant alleges that the Conduct Authority’s decision contravened the principles of procedural fairness, was based on an error of law and was clearly unreasonable. The Appellant argues that he was denied procedural fairness because he was not provided advance notice that he was potentially facing a demotion. The Appellant raises a number of arguments, appealing the Conduct Authority’s finding on the Allegation. The Appellant also appeals the conduct measures imposed by the Conduct Authority. The Appellant alleges that the conduct measures imposed were clearly unreasonable because the Conduct Authority considered certain irrelevant considerations. The Appellant alleges that the Conduct Authority failed to consider that the mitigating factors exceeded the aggravating factors when imposing conduct measures and that the demotion was not proportionate to the circumstances.

ERC Findings: The ERC found that the Appellant was not denied procedural fairness because he was informed, through the Notice of Conduct Meeting, of the conduct measures that were available to the Conduct Authority, which included demotion.

The ERC found that the Conduct Authority did not make a reviewable error in his implied finding that the Appellant’s comments to Cst. Z were sexual in nature.

The ERC found that even though the Appellant did not place a condition of a sexual nature on Cst. Z’s employment or on any opportunity for Cst. Z’s training or promotion, his behaviour amounted to sexual harassment.

The ERC was of the view that the Conduct Authority was not required to consider the intentions of the Appellant when he interacted with Cst. Z, when making a finding of sexual harassment.

The ERC found that there was no reviewable error in the Respondent’s weighing of the evidence, or in his application of the test of sexual harassment. The ERC was of the view that the Conduct Authority provided sufficient reasons for his Decision on the allegation.

The ERC found that the conduct measures imposed on the Appellant by the Conduct Authority were not clearly unreasonable and do not require intervention on appeal. The Conduct Authority identified the appropriate range of conduct measures that he would consider imposing in the Decision. The Conduct Authority’s identification of both mitigating and aggravating factors in his Decision was supported by the record and was not influenced by irrelevant considerations. The

conduct measures selected by the Conduct Authority were proportionate to the misconduct and supported by the principles in the Conduct Measures Guide.

ERC Recommendations: The ERC recommends that, pursuant to subsection 45.16(2)(a) of the *RCMP Act*, the appeal in respect of the finding on the Allegation be dismissed.

The ERC recommends that, pursuant to subsection 45.16(3)(a) of the *RCMP Act*, the appeal relating to conduct measures be dismissed and that the conduct measures imposed by the Conduct Authority be confirmed.

Other Appeals

NC-073 – Harassment

The Appellant presented a harassment complaint (Complaint) against his former Line Officer, the Alleged Harasser. The Complaint contained numerous allegations, including incidents where the Alleged Harasser had made comments which the Appellant perceived as offensive. Other allegations involved the Appellant's belief that the Alleged Harasser interfered in the Appellant's family status accommodation plan and acted unprofessionally in the management of the Appellant's leave related to this accommodation.

The Respondent rendered a Decision finding that the Complaint was not established. In his view, the Alleged Harasser's actions did not amount to harassment. The Respondent found that a manager exercising his managerial duties regarding accommodation and leave could not constitute harassment. The Respondent further found that several of the events occurred prior to the Alleged Harasser having knowledge of the negative impact they had on the Appellant and as a result, they could not be considered. The Respondent found that the remaining incidents did not meet the threshold for harassment. Finally, the Respondent found that one of the incidents could not be found to be directed at the Appellant.

The Appellant appealed the Respondent's Decision.

ERC Findings: The ERC found that the Decision was clearly unreasonable for three reasons. First, the ERC held that there is a requirement to make determinations when contradictory evidence is presented to a decision-maker. In this matter, the evidence contained contradictions regarding several incidents; however, the Respondent's decision did not resolve these conflicts. Without these determinations, the reasons for the decision could not be found to be sufficient. Second, while the Respondent properly set out the definition of harassment and the reasonable person test, the Respondent emphasized that the Alleged Harasser could only know of the impact on the Appellant after the problematic behaviour was brought to his attention. This contradicts the reasonable person test which emphasizes whether the Alleged Harasser ought to have known of the impact of his actions. In the same regard, the Respondent took into consideration the Alleged Harasser's willingness to cease his actions had he known of the offence being caused. This reliance on the intent of the Alleged Harasser, and his actual knowledge of the impact on the Appellant, were both found to be incorrect considerations in applying the reasonable person test. Third, the ERC found that the scope of events considered by the Respondent, in deciding whether there was a pattern of harassment, was too limited.

ERC Recommendations: The ERC recommends that the Commissioner allow the appeal and remit the matter to a new decision-maker to reassess the conflicting evidence, reapply the reasonable person test, and reconsider whether the incidents establish a pattern of harassment.

NC-074 – Harassment

The Appellant filed a harassment complaint with the Office for the Coordination of Harassment Complaints (OCHC). In the complaint, the Appellant alleges that, as he was approaching retirement, the Alleged Harasser initiated his transfer to another section to a position inferior to his qualifications. The OCHC reviewer recommended that a limited investigation be mandated. However, the Respondent did not mandate an investigation and rendered his decision concluding that the Appellant's transfer was not harassment and the complaint should have been handled within a grievance process.

On appeal, the Appellant alleged that a thorough investigation was not conducted: neither he nor the Alleged Harasser nor the potential witness were interviewed. He submits that an investigation would have enabled the Respondent to have a more complete understanding of the facts of the case.

ERC Findings: The ERC found that the Respondent's decision not to mandate an investigation was clearly unreasonable because the facts before the Respondent did not provide a complete version of what had happened. Interviews with the Appellant, the Alleged Harasser and a witness, as well as documentary evidence, might have enabled the Respondent to better assess the allegations of harassment.

ERC Recommendations: The ERC recommends that the appeal be allowed and that the matter be remitted to a new decision-maker for a new decision with the direction to mandate an investigation into the Appellant's complaint, which should include interviews with the Appellant, the Alleged Harasser and the potential witness.

NC-075 – Harassment

The Appellant was found guilty of a crime and he received a conditional discharge. The same incident led to conduct proceedings, which resulted in conduct measures being imposed on the Appellant. After he returned to work at his section, the Appellant decided to seek a transfer. He accepted a secondment at another section. The Alleged Harasser later removed the Appellant from his secondment.

The Appellant lodged a harassment complaint against the Alleged Harasser's decision to remove him from his secondment. He alleged that the Alleged Harasser's conduct constituted harassment and discrimination based on his conditional discharge. He also contended that the Alleged Harasser perpetuated a smear campaign against him. The Respondent found no harassment. He determined that the Alleged Harasser's decision was based on the Appellant's past discipline, and on the fact that the Appellant was primarily employed with another section.

The Appellant appealed the decision. He submitted that the Respondent failed to consider whether the Appellant had been subject to harassment and discrimination under the *Canadian Human Rights Act (CHRA)*. He further submitted that, in spite of the justifications provided by the Alleged Harasser, the Appellant could have been employed at a different position at the same section instead of being removed from his secondment.

ERC Findings: The ERC concluded that the Respondent's decision was clearly unreasonable. The ERC found that the Respondent failed to properly address the Appellant's substantive arguments regarding harassment within the meaning of the *CHRA*. The ERC also found that, in light of its recommendations to remit the matter for a further investigation and a new decision, it was unnecessary to consider the Appellant's argument that the Respondent failed to address the Appellant's qualifications for a different position.

ERC Recommendations: The ERC recommends that the Commissioner allow the appeal and remit the matter to a new decision-maker with a direction to assess whether it is possible to obtain, through a supplementary investigation, information relevant to whether the Alleged Harasser's decisions were based in part on the Appellant's criminal record. The ERC further recommends that once such an investigation is completed, the decision-maker be directed to render a new decision which properly considers whether harassment had occurred pursuant to the *CHRA*.

NC-076 – Harassment

The Appellant presented a harassment complaint (Complaint) against her Detachment Commander, the Alleged Harasser. The Complaint contained numerous allegations, including incidents where the Alleged Harasser had made comments which the Appellant perceived as offensive. Other allegations involved the Appellant's belief that the Alleged Harasser was making sexual advances towards her.

The Respondent rendered a Decision finding that the Complaint was not established. In his view, the Alleged Harasser's actions did not amount to harassment. The Respondent found that, while a couple comments should not have been made, they did not constitute harassment. The Respondent further found that the Alleged Harasser did not make sexual advances towards the Appellant, and that he had treated her no differently than others in the detachment. The Respondent found that the remaining incidents did not meet the threshold for harassment. Finally, the Respondent found that looking at all the allegations as a whole, they did not meet the test for harassment.

The Appellant appealed the Respondent's Decision.

ERC Findings: The ERC found that the Respondent applied the wrong test for harassment in his decision and committed an error of law. The Respondent referred to the proper definition of harassment from the RCMP Administration Manual, but when the Respondent identified what is required in order to make a finding of harassment, the test he stated was not consistent with the cited manual. The ERC further found that the Decision was unreasonable as the Respondent did not explain how his finding that in two incidents, the Alleged Harasser should not have said what he did, but that this was not a pattern of harassment. Further, the ERC found that the Respondent had found for one incident, had it been repeated, there could be a different finding relating to harassment, but did not explain why two other similar incidents did not create a pattern for harassment. The ERC also found it was unreasonable to not have an investigation conducted when the Appellant and Alleged Harasser had different accounts of the events that led to the Complaint. There is no analysis to explain these differences, or why an investigation wasn't conducted.

ERC Recommendations: The ERC recommends that the Commissioner allow the appeal and remit the matter to a new decision-maker to reassess the evidence, have an investigation conducted, reapply the proper reasonable person test, and reconsider whether the incidents establish a pattern of harassment.

NC-077 – Harassment

The Appellant is a Corporal with many years of service in the RCMP. For the majority of his career, he pursued part-time education, outside his work hours. In September 2014, his manager

at the time authorized him to have a compressed work schedule to allow him to finish his studies. This accommodation allowed the Appellant to complete his work weeks in four days instead of five. Furthermore, overtime hours had been regularly approved for him.

In September 2016, the Appellant had a new manager (the Alleged Harasser). Upon his arrival, the Alleged Harasser told the Appellant that he had to return to a regular work schedule, a “5-2” schedule. The Alleged Harasser also withdrew the possibility of the Appellant working overtime.

On December 3, 2016, the Appellant filed a harassment complaint against the Alleged Harasser that included five allegations. The allegations concerned events that took place from September to November 2016. The Respondent found that the complaint should have been the subject of a grievance and that the harassment complaint resolution process was therefore not appropriate in the circumstances. Consequently, the complaint was dismissed without an investigation being mandated.

The Appellant appealed the Respondent’s decision, alleging in particular that the latter erred by failing to consider all of the allegations contained in the complaint and by not mandating an investigation.

ERC Findings: The ERC found that the Respondent’s decision not to mandate an investigation was clearly unreasonable, as the evidence on file was insufficient to render a decision. The ERC also found that the failure to consider all of the allegations contained in the complaint constituted an error affecting the reasonableness of the decision.

ERC Recommendations: The ERC recommends that the appeal be allowed and that the matter be remitted to a new decision-maker for a new decision.

NC-078 – Harassment

The Appellant filed a harassment complaint with the Office for the Coordination of Harassment Complaints (OCHC). In the complaint, the Appellant alleged that he was harassed by being excluded from certain emails, which he should have received, and meetings, which he should have attended. The OCHC reviewer recommended that a limited investigation be mandated. However, the Respondent did not mandate an investigation and made its decision finding that the incidents described by the Appellant did not meet the definition of harassment.

On appeal, the Appellant argues that the Respondent should have investigated his allegations. He also alleges that the Respondent broke the chain of incidents rather than taking into account all of the incidents that demonstrated persistent behaviour by the Alleged Harasser. He also argues that the Respondent was not impartial because the Alleged Harasser reported to the Respondent.

ERC Findings: The ERC found that the Respondent’s decision not to mandate an investigation was clearly unreasonable, as the facts available to the Respondent did not allow him to get a complete picture of what had happened. Interviewing the Appellant, the Alleged Harasser and the potential witnesses could have allowed the Respondent to better assess the allegations of harassment.

ERC Recommendations: The ERC recommends that the appeal be allowed and that the matter be remitted to a new decision-maker for a new decision with the directive to mandate an investigation of the Appellant’s complaint, which should include interviewing the Appellant, the Alleged Harasser and the potential witnesses.

NC-079 – Harassment

The Appellant presented a harassment complaint (Complaint) against a Detachment Commander, the Alleged Harasser. The Complaint contained a number of allegations, including the allegation that the Alleged Harasser had called the Appellant a derogatory name and had impacted the choice of whether he should obtain a position at the Detachment. Other allegations involved comments made by the Alleged Harasser about the Appellant being “sneaky” and “unethical”.

The Respondent rendered a decision finding that the Complaint was not established. In his view, the allegations that the Alleged Harasser had called the Appellant a derogatory name or had impacted the choice of who would be obtaining the position in his Detachment, were not established and the evidence did not support a finding that the Alleged Harasser engaged in harassment.

The Appellant appealed the Respondent’s decision.

ERC Findings: The ERC found that the Respondent had cited the correct test for harassment, but had ignored evidence about comments made by the Alleged Harasser. The ERC found that the decision was clearly unreasonable as it did not address all the incidents in the harassment allegation.

ERC Recommendations: The ERC recommends that the Commissioner allow the appeal and remit the matter to a new decision-maker to reassess the evidence.

Former Legislation Cases:

Grievances

G-736 – Relocation

In 2005, following a period of Leave Without Pay (LWOP), the Grievor was transferred from his prior posting to another posting. The cost of his relocation was not covered by the Force. This decision was reviewed in 2012, at which time, the Grievor was informed he was entitled to certain relocation expenses. The Grievor did not have receipts to establish the costs he sought to have reimbursed (the shipment of his House Hold Effects (HHE)) and was denied reimbursement for these expenses.

The Grievor requested costs, including interest. The Level I Adjudicator denied the grievance on its merits, finding that the Respondent’s decision to refuse a reimbursement of undocumented relocation costs was consistent with policy and there were no legislative provisions entitling the Grievor to the payment of interest.

ERC Findings: The ERC found that the scope of the grievance was limited to the Respondent’s 2012 decision requiring receipts to reimburse the Grievor’s requested relocation costs and refusing to pay the Grievor interest. Although the Force erred in 2005 by initially denying the Grievor his relocation costs, the grievance was presented in response to the 2012 decision. A review pertaining to the 2005 decision would be untimely. In addition, the ERC found that the Grievor failed to provide sufficient supporting facts of the 2005 decision; and it found that the Grievor’s arguments pertaining to unfair treatment in 2005 were not relevant to the grievance.

The ERC found that the Respondent's decision to require receipts or other proof of expenses to reimburse the Grievor for his submitted relocation expenses was within policy. Further, the ERC found there is no statutory authority to support the payment of interest in circumstances similar to the facts of the case.

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 challenged the Respondent's decision to deny his request for reimbursement of relocation expenses plus interest he incurred when transferring his household effects. The Level I Adjudicator dismissed the grievance. The ERC recommended the grievance be denied on the basis that the Respondent's decision was supported by policy. The Commissioner accepts that the Grievor's request for reimbursement was not substantiated by receipts or other proof as required by the RCMP Integrated Relocation Program. The grievance is denied.

G-737 – Isolated Posts

The Grievor resided at an isolated post. His pregnant spouse went into labour and she was transported to a hospital. The Grievor followed by car the next day. Due to medical complications, the Grievor's newborn child had to remain at the hospital for several weeks. Over this period, the Grievor completed three round trips between his isolated post and the location of the hospital. The Grievor always travelled with his second child.

After his family returned to the isolated post, the Grievor submitted a travel expense claim, which included hotel costs, mileage, meals and parking expenses. The Respondent approved the claim for a reduced amount. The Respondent refused to cover the Grievor's meals, parking and mileage at the higher kilometric rate. The Grievor's claim was further reduced by a Financial Management Advisor, who concluded that the Grievor did not qualify as an escort because he did not escort his spouse to the hospital.

The Grievor submitted a grievance, requesting to be reimbursed the full amount he had originally claimed. The Grievor argued that all of his expenses were approved by his Human Resources Officer (HRO). Furthermore, the Grievor believed that he was entitled to full compensation under various policies, including the Isolated Posts and Government Housing Directive (IPGHD). The Respondent conceded that the Grievor was entitled to some compensation because of the HRO's preauthorization. However, the Respondent insisted that the Grievor could not claim meal expenses because he failed to submit meal receipts pursuant to the IPGHD. Furthermore, the Respondent contended that the Grievor was not entitled to be reimbursed at the higher kilometric rate because a portion of the trip could have been completed by public transit.

ERC Findings: The ERC recommends that the grievance be allowed. The ERC found that, contrary to the opinion of the Financial Management Advisor, the Grievor qualified as an escort because his travel was approved by the HRO. The ERC further found that the Grievor relied on the HRO's representations in good faith that meal receipts were not required. Therefore, the doctrine of estoppel applied to the RCMP's denial of the Grievor's claim for meal expenses. Finally, the ERC found that the Grievor could claim reimbursement at the higher kilometric rate pursuant to the IPGHD.

ERC Recommendations: The ERC recommends that the Commissioner allow the grievance and reimburse the Grievor for his travel as an escort, for his dependant's travel, for hotel

accommodations, meals, incidentals and for mileage at the high kilometric rate pursuant to the Grievor's original travel expense claim.

G-738 – Relocation

The Grievor relocated to a new post. His family and household effects (HHE) remained at his old post. His residence at the old post was marketed and unsold. After two months, the Grievor's family and HHE arrived at his new post.

The Grievor received Temporary Dual Residence Assistance (TDRA) or similar benefits for the initial two months which preceded the arrival of his family and HHE. After some time, the Grievor submitted an expense claim for an additional seven months of TDRA. The Respondent denied the expense claim on the basis that the Grievor had failed to obtain prior authorization for TDRA pursuant to section 6.02. of the Integrated Relocation Program (IRP).

The Grievor submitted a grievance, requesting that his TDRA claim be approved, and that he receive interest for the period between his claim submission and the resolution of his grievance. The Grievor argued that he did obtain preauthorization. The Grievor relied on authorizations in Form A22-A and on the fact that his new post Commanding Officer (CO) granted TDRA or similar benefits for the initial two months following the Grievor's relocation. The Grievor further submitted that he had fulfilled all requirements for TDRA under the IRP. The Respondent insisted that the Grievor never obtained preauthorization. The Respondent also argued that the Grievor's TDRA claim listed expenses that the Grievor was not entitled to under the IRP.

ERC Findings: The ERC found that the Grievor had not demonstrated that the three individuals listed in section 6.02.3. of the IRP provided prior approval for TDRA. Form A22-A only confirmed that the Grievor's relocation was authorized. It was insufficient to confirm the authorization for TDRA. The fact that the Grievor was reimbursed for the initial two months following his relocation only confirmed, at best, that the Grievor's new post CO authorized TDRA. It did not constitute authorization from the other two individuals listed in section 6.02.3. of the IRP.

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-045 Conduct Board Decision (summarized in the January – March 2021 Communiqué)

This is an appeal of a Conduct Board (Board) decision ordering the Appellant to resign within 14 days or face dismissal from the Force.

The Appellant was charged with two allegations under section 4.6 and two allegations under section 7.1 of the *RCMP Code of Conduct* relating to his unauthorized accessing of RCMP electronic file information to obtain the phone numbers of two female members of the public for

non-duty related reasons and his use of this information to initiate contact with the two women.

The Appellant accessed RCMP electronic file information to obtain the cell phone number of a minor. In a separate series of events, the Appellant accessed RCMP electronic file information to obtain a second individual's personal phone number. He sent her a text message to invite her for coffee. In an Agreed Statement of Facts, the Appellant admitted to three of the four allegations. The Board found that all four allegations were established and imposed the conduct measure of dismissal.

The Appellant appealed the conduct measure. He argued that both the Conduct Authority and the Board did not follow the Administrative Manual, Chapter XII.1 entitled, "Conduct" (Conduct Policy) during the conduct proceedings and this resulted in procedural unfairness to the Appellant. The Appellant also argued that an earlier decision by the Board to deny the Appellant's motion for a stay of proceedings for an alleged excessive delay in serving the Appellant the Notice of Hearing was unreasonable. The Appellant argued that the Board's findings on all the allegations were clearly unreasonable because the Board failed to consider relevant facts and mischaracterized the Appellant's conduct.

The Appellant argued that the Board erred by rejecting the Appellant's expert's testimony about how the Appellant's medical condition and personal circumstances contributed to his impaired moral judgment at the time of the misconduct. The Appellant also argued that the Board erred by improperly attributing too much weight to certain aggravating factors and discounting certain mitigating factors. The Appellant was of the view that the Board's order of dismissal was not a proportionate conduct measure and that the Board did not give proper consideration to non-dismissal measures proposed by the Appellant at the hearing.

ERC Findings: The ERC found that the Conduct Authority and the Board adhered to the Conduct Policy during the conduct proceedings. The ERC found that the Board's decision to deny the Appellant's motion for a stay of proceedings was not clearly unreasonable and that the Board applied the correct test in determining whether a stay of proceedings should be granted and gave proper consideration to the arguments raised by the Appellant in the motion. The ERC further found that the Board's findings on all the allegations were supported by the record and were not clearly unreasonable.

The ERC found that the Board did not make a reviewable error when considering the testimony from both the Appellant's and the Conduct Authority's experts and rejecting the Appellant's argument that his medical condition and personal circumstances contributed to his impaired moral judgment at the time of the misconduct. The Board's weighing of the other mitigating and aggravating factors in the decision was supported by the record and was not influenced by irrelevant considerations. The ERC found that the Board gave proper consideration to the non-dismissal measures that were proposed by the Appellant at the hearing and the Board's order of dismissal was a proportionate conduct measure. A key consideration in the Board's reasons for dismissal was that the Appellant's actions fell short of the "bedrock expectation that members shall only act to protect the health and safety of Canada's youth and shall never deliberately and repeatedly exploit any vulnerable young person".

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 faced two allegations under section 4.6 (misuse of RCMP information management/information technology systems) and two allegations under section 7.1 (discreditable conduct) of the *RCMP Code of Conduct* for unauthorized access of RCMP databases to obtain the phone number of two female members of the public for non-duty related reasons. The Appellant subsequently used this information to initiate contact with the two women, including one who was underage and a complainant in a sexual assault investigation.

The Appellant admitted to three of the four allegations. A Conduct Board (Board) found all four allegations established and ordered the Appellant to resign within 14 days or be dismissed from Force. The Appellant appealed this decision.

On appeal, the Appellant argued Conduct Authority and Board breached the relevant principles of procedural fairness by failing to follow policy, and that the Board's decision was clearly unreasonable as it mischaracterized certain conduct and failed to consider relevant facts when finding that the allegations were established. The Appellant also challenged an earlier decision by the Board denying his motion for a stay of proceedings for abuse of process. With regard to conduct measures, the Appellant argued that the decision was clearly unreasonable by discounting certain mitigating factors, placing too much weight on certain aggravating factors, failing to consider non-dismissal measures, and that dismissal was ultimately not the appropriate conduct measure.

The appeal was referred to the RCMP External Review Committee (ERC) for review. The ERC found that Conduct Authority and Board did not breach the relevant principles of procedural fairness, and that the Board's decision is not clearly unreasonable.

An Adjudicator found that the Board's decision was supported by the record and that the Board did not make a manifest and determinative error in denying the motion for a stay of proceedings, its finding on the allegations, and ultimately determining dismissal was a proportionate conduct measure. The appeal was dismissed.

C-047 Conduct Board Decision (summarized in the April – June 2021 Communiqué)

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

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

The Board ordered the Appellant to be dismissed for the discreditable conduct and added a forfeiture of 15 days’ pay for the failure to perform duties. The Appellant contends that the conduct measures imposed were unreasonable and overly punitive, that the Board was biased in the decision-making process, and that the Board did not allow the merits of the allegations to be argued. The Board ought to have also afforded the Appellant the opportunity to test assertions through cross-examination and make fulsome submissions on the merits of the allegations. Like the ERC, I find the Board breached the principles of procedural fairness by: not informing the Parties that it intended to render a decision on the merits without an oral hearing or further written submissions; not allowing the Parties to test the credibility of Ms. Z in direct testimony and cross-examination; and, not providing the Appellant an opportunity to make comprehensive submissions on the allegations and the evidence. I allow the appeal and order a new hearing before a differently constituted conduct board pursuant to paragraph 45.16(1)(b) of the *RCMP Act*.

Other Appeals

NC-068 Harassment (summarized in the January – March 2021 Communiqué)

In October 2015, the Alleged Harasser joined the detachment where the Appellant worked. They began exchanging text messages and seeing each other outside work. Their professional relationship reportedly began to deteriorate in February 2016. According to the Appellant, the Alleged Harasser was disrespectful to her. Many incidents occurred during which the Appellant felt that she was demeaned and ridiculed in front of her co-workers.

On June 7, 2017, the Appellant filed a harassment complaint against the Alleged Harasser that included eight allegations. The allegations related to facts that had occurred from November 2015 to May 2017. The Respondent mandated two investigators to investigate these allegations. The investigators met with several witnesses, including the Appellant and the Alleged Harasser. In his decision, the Respondent considered the allegations by addressing them one by one. For each of the eight allegations, he concluded that it had not been proven that the Alleged Harasser demonstrated harassing behaviour.

The Appellant appealed this decision, arguing that the Respondent had not considered all of the evidence, particularly the photos and text messages sent by the Alleged Harasser, and that he had failed to assess the credibility of some witnesses who allegedly lied in their statements. She also submitted that the investigation was subjective, since the investigators had failed to question some key witnesses, whereas they met with others who were not present during the incidents about which they were questioned.

ERC Findings: The ERC found that the Respondent had not breached his duty to make a reasonable decision. He took all of the evidence into account and indicated this several times in his decision. With respect to the photos and text messages sent by the Alleged Harasser, the ERC noted that these elements should have been included in the file, as they were the basis of Allegation 1. It was determined, however, that their absence had not influenced the Respondent in his decision-making process and that he had not, therefore, made any determinative errors by not acquiring them. The ERC also found that the Respondent was not required to assess the credibility of witnesses before assigning weight to their evidence. It was also determined that the Appellant had not succeeded in demonstrating that some witnesses had lied in their statements. Lastly, the ERC concluded that the Appellant had not provided any compelling evidence to demonstrate that the investigation had not been objective and rigorous.

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

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

[Translation]

While assigned to "X" Division, the Appellant filed a harassment complaint involving the actions of a Corporal in the unit where she was working at the time. An investigation was mandated to review the complaint. The Appellant and the Alleged Harasser were given the opportunity to make submissions with respect to the preliminary investigation report and the Appellant made submissions.

The Final Investigation Report was submitted to the Respondent, who assessed the evidence and dismissed the complaint. He was of the opinion that, individually and as a whole, the alleged behaviours did not amount to harassment against the Appellant.

The Appellant considered the Respondent's decision to be clearly unreasonable and appealed on the grounds that the Respondent had failed to consider certain evidence and to assess the credibility of certain witnesses. She added that the investigation was subjective and not rigorous since some witnesses were not questioned.

The file was referred to the ERC. After reviewing the grounds of appeal, the ERC found that the Appellant had failed to prove that the Respondent made a clearly unreasonable error in weighing the evidence and that the investigation was not objective and rigorous. The ERC therefore recommends that the appeal be dismissed.

The Adjudicator found that the Appellant had not shown that the Respondent's decision was clearly unreasonable. He therefore upheld the Respondent's decision and dismissed the appeal.

NC-072 Harassment (summarized in the April – June 2021 Communiqué)

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 recommended that the Commissioner dismiss the appeal.

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

The Appellant applied for a corporal position at a Division. He was a promotion by exception candidate. The promotional process concluded without naming a successful candidate, as the Line Officer opted not to promote by exception. The position was then re-advertised and required candidates to meet a certain criteria, under a Special Measures Designation. The Appellant reapplied even though he did not meet this criteria. The only other candidate, who did meet this criteria, received the promotion. The Appellant filed a harassment complaint against the Commanding Officer of "X" Division, the Alleged Harasser, on the grounds of discrimination, claiming that the promotion process was unlawful, as no particular group may be given preference over another.

A limited investigation was mandated to interview the Appellant and the Alleged Harasser. The Respondent found that the limited investigation was sufficient to determine that harassment was not established, since the Alleged Harasser was not involved in the promotion process and the Special Measures Designation took place in good faith. The Appellant filed this appeal.

The ERC found no breaches of procedural fairness, nor errors of law, and determined that the decision is not clearly unreasonable. The ERC recommended the appeal to 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. Further, the Adjudicator found that the Force was legally bound by an agreement, which provides that certain members may be given preference apart from other members. The Adjudicator also found that harassment was not established and the promotional process was lawful.